



# Annual Plan 2010/11

Statement

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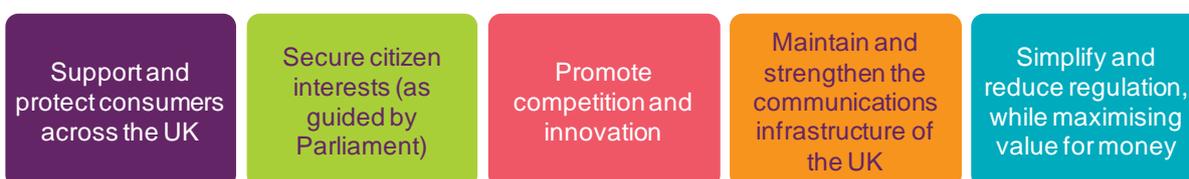
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## Section 1

# One-page overview

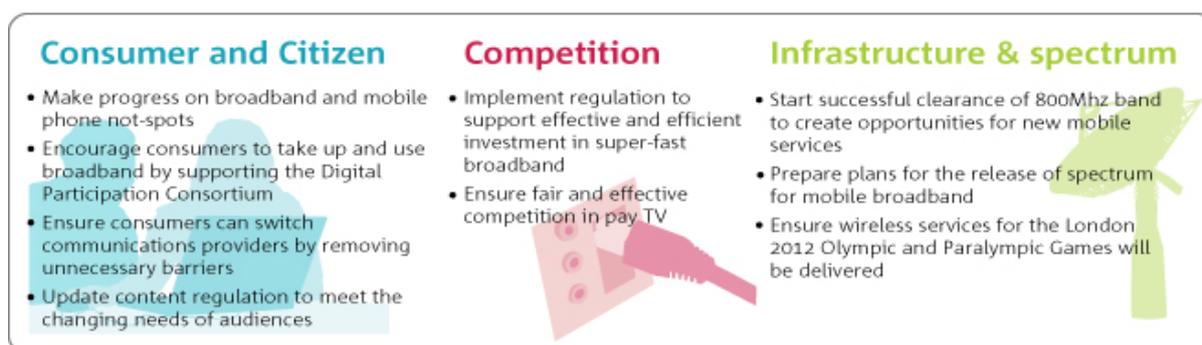
## The Annual Plan sets out Ofcom's work programme to further the interests of citizens and consumers

- 1.1 Ofcom's Annual Plan sets out our work programme for the twelve months from 1 April 2010 to 31 March 2011.
- 1.2 The 2003 Communications Act gave Ofcom primary duties to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 1.3 In order to fulfil these duties, we have five main objectives that inform all of our work and activities. These are to:



## We have set clear priorities for the year ahead, to ensure that we continue to deliver against these objectives

- 1.4 The communications sector plays a vital economic and cultural role in the UK, while experiencing rapid change from the growth of digital media. Ofcom's work should seek to ensure that the sector continues to deliver positive outcomes for consumers and citizens throughout the country.
- 1.5 Based on our analysis of market developments and our progress against our 2009/10 Annual Plan, and following consultation with our stakeholders, we have identified nine priority areas of work for the year ahead.



- 1.6 In addition to these priorities we also have a number of ongoing work areas that will continue into next year.

## Section 2

# Executive summary

### The Annual Plan sets out Ofcom's work programme

- 2.1 Ofcom's Annual Plan sets out our work programme for the twelve months from 1 April 2010 to 31 March 2011. Alongside this plan, a table showing our planned projects and outputs is published on our website<sup>1</sup>.

### Ofcom's work is focused on furthering the interests of citizens and consumers

- 2.2 The 2003 Communications Act gave Ofcom primary duties to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.3 In order to fulfil these duties, we have five main objectives that inform all of our work and activities. These are to:

Support and protect consumers across the UK

Secure citizen interests (as guided by Parliament)

Promote competition and innovation

Maintain and strengthen the communications infrastructure of the UK

Simplify and reduce regulation, while maximising value for money

- 2.4 Our focus is on supporting a healthy communications sector in which: consumers are supported and protected, a range of high quality content and services is available, and consumers and citizens benefit from competition, innovation and strong infrastructure. We also continue to ensure we are operating efficiently and have been able to make real-term cost savings every year since our inception.
- 2.5 In setting our priorities for 2010/11, we have examined available evidence to enable us to assess where the communications sector is delivering positive outcomes for citizens and consumers, and also where problems have arisen, or further progress needs to be made, for us to achieve our statutory duties and objectives. Our reports, *The Consumer Experience*<sup>2</sup> and *The Business Consumer Experience*<sup>3</sup> set out further details of this research.
- 2.6 We published our Draft Annual Plan for consultation for 10 weeks on 9 December 2009<sup>4</sup>. During this period we also held a range of stakeholder consultation events and conducted further analysis of our work programme. Consultation responses were generally supportive of our proposed priorities and work programme for 2010/11. We have taken account of comments and added details to our Annual Plan in areas requested by respondents. In addition, consultation responses contained many specific comments, question and suggestions. Annex 3 summarises our responses to this feedback.

<sup>1</sup> [http://www.ofcom.org.uk/about/accoun/reports\\_plans/annual\\_plan1011/projects/](http://www.ofcom.org.uk/about/accoun/reports_plans/annual_plan1011/projects/)

<sup>2</sup> <http://www.ofcom.org.uk/research/tce/ce09/>

<sup>3</sup> <http://www.ofcom.org.uk/research/tce/bce/>

<sup>4</sup> <http://www.ofcom.org.uk/consult/condocs/draftannplan1011/>

## **Our work in 2010/11 will focus on areas where we want to make significant progress towards achieving positive outcomes for citizens and consumers**

- 2.7 We have identified nine priority areas where we want to make significant progress in the coming year, to ensure positive outcomes for consumers and citizens.
- 2.8 In addition to these priorities, we have a number of other ongoing areas of work. Our work programme is illustrated in Figure 1 and details of the specific projects underlying this programme are provided in Annex 1.

## **We will continue to work to deliver specific outcomes that benefit citizens and consumers, including businesses, in the communications market**

- 2.9 Supporting and protecting consumers, and securing citizens' interests, have always been at the heart of Ofcom's work programme.
- 2.10 For 2010/11 we plan to make significant progress on four priorities in these areas.
- 2.11 We will work with the Digital Participation Consortium formed by the Government to encourage and develop digital participation across the UK. **Encouraging consumers to take up and use broadband by supporting the Digital Participation Consortium** will be a priority for us.
- 2.12 Inadequate mobile and broadband coverage is potentially detrimental to citizens and consumers, including businesses. Rural parts of the UK, especially in the devolved Nations, are particularly affected by these issues. **Making progress on broadband and mobile phone not-spots** will be a further priority.
- 2.13 Increasing competition has delivered many benefits for consumers: wider choice, lower prices and innovation. But rapidly changing products and pricing models, and complicated processes for switching suppliers and packages can create difficulties for consumers. In light of this, continuing to **ensure consumers can switch between communications providers by removing unnecessary barriers** will be a priority for us in 2010/11.
- 2.14 Content regulation currently varies by platform, but the distinctions between platforms are beginning to blur. As a result, clear, simple and effective regulation will become increasingly important. **Updating content regulation to meet the changing needs of audiences** is a priority for 2010/11.
- 2.15 In addition to the above priorities we will also continue to focus on the following ongoing major work areas:
- Ensuring the availability, take-up and effective use of communications services;
  - Reviewing and promoting available consumer information;
  - Protecting consumers and audiences from harm and from unfair practices; and
  - Understanding the experiences of business consumers.

## **We will continue to promote competition and innovation in communications markets to ensure that consumers, including businesses, benefit from wider choice, lower prices and new services**

- 2.16 Consumers and citizens benefit from well functioning competitive markets. Competition can deliver lower prices and a wider choice of goods and services. In

markets where competition is weak, consumers are often disadvantaged as firms may lack incentives to innovate, thereby restricting choice, and keeping prices high.

- 2.17 For 2010/11 we have two priorities for progress in the area of competition.
- 2.18 Following investment in super-fast broadband networks, with deployments by Virgin Media, BT and other providers, our priority for next year will be **implementing regulation to support effective competition and efficient investment in super-fast broadband**, primarily through our market review processes.
- 2.19 Following the publication of our final statement in relation to the pay TV investigation, we will continue to **ensure fair and effective competition in pay TV**.
- 2.20 In addition to these priorities outlined above we also have a range of ongoing major work areas we will focus on in the area of competition:
- Continuing to promote effective competition in fixed and mobile telecoms;
  - Reviewing regulatory rules that affect the funding of content; and
  - Enforcing competition and resolving disputes.

### **We continue to encourage the maintenance and strengthening of the communications infrastructure, to support innovation and new services**

- 2.21 There has been an encouraging overall level of investment in the communications infrastructure over recent years. Consumers are starting to benefit from a wide range of new and improved services and we will continue to ensure the maintenance and strengthening of the communications infrastructure over the next year.
- 2.22 For 2010/11 we have three priority areas we plan to make significant progress on relating to infrastructure and spectrum.
- 2.23 If consumers are to have access to innovative wireless services, suitable spectrum must be available. In order to progress our work on releasing spectrum, we will treat the **clearance of the 800MHz band in preparation for release and preparing plans for the release of spectrum for mobile broadband**, as priorities for 2010/11.
- 2.24 Another vital spectrum-related task will be the London 2012 Olympic Games and Paralympic Games. **Ensuring wireless services for the London 2012 Olympic and Paralympic Games will be delivered** will be a priority for us next year.
- 2.25 In addition to the above, we will also have a number of ongoing work areas in the area of infrastructure and spectrum over the next twelve months. These cover:
- Working with Digital UK and Government to support the digital switchover of TV;
  - Promoting efficient allocation of spectrum bands for new uses;
  - Developing a stable international framework to underpin our spectrum awards programme; and
  - Understanding network capabilities.

### **We will also complete work in a range of supporting and enabling areas**

- 2.26 In addition to the above, we expect to work on a range of areas that will support and enable us to deliver our duties and outlined work. The key areas for 2010/11 will include implementing relevant provisions of the revised European Regulatory

Framework, implementing new duties and tasks stemming from the Digital Economy Bill as well as developing Ofcom's longer-term future strategic framework.

- 2.27 One of Ofcom's roles is also to deliver specific services to our stakeholders. We will continue to deliver essential services, including keeping the airwaves free from interference, allocating telephone number ranges and providing information services, as required by the Communications Act. Annex 2 provides details of these activities.

### **We will continue to work to support the needs of consumers and citizens across the English Regions, Northern Ireland, Scotland and Wales**

- 2.28 We recognise the experiences, concerns and needs of citizens and consumers, including businesses, vary depending on where they are in the UK. A vital part of our work is to consider how issues affect consumers and citizens in different parts of the country.
- 2.29 Understanding the experiences and needs of citizens and consumers throughout the UK will remain an ongoing focus underpinning our work. As part of all our activities we consider how our work and its outcomes relate to the English Regions, Northern Ireland, Scotland and Wales. Where relevant we will strive to target our work to the specific needs of the Nations and Regions.

### **We have made progress in a number of areas to reduce the burdens we place on stakeholders**

- 2.30 Wherever possible, our goal is to allow the market to deliver positive outcomes for consumers and citizens, without regulation. Ofcom remains committed to reducing and simplifying complex or unnecessary regulation, while improving the value for money that we deliver to stakeholders by continuing to improve our own efficiency.
- 2.31 For 2010/11 Ofcom's total budget is £142.5m. This includes funding for a number of new responsibilities required by Government, and pension deficit repair payments which Ofcom inherited. Excluding additional activities, such as peer-to-peer internet file sharing, our core operating budget is £127.5m. On a like-for-like basis this is 3.6% lower in real terms than our budget for 2009/10.

### **Our plan allows us to respond to changes and new issues**

- 2.32 There will always be developments and issues within the communications sector that we need to respond to, but cannot always plan for in detail. We expect 2010/11 to be no different. As in previous years, we intend to retain flexibility within the Annual Plan for 2010/11, in order to allow us to respond to changes and new issues arising as necessary.

**Figure 1: Ofcom 2010/11 work programme: overview**

	Consumer & citizen	Competition	Infrastructure & spectrum
Priorities for 2010/11	<ul style="list-style-type: none"> <li>• Make progress on broadband and mobile phone not-spots</li> <li>• Encourage consumers to take up and use broadband by supporting the Digital Participation Consortium</li> <li>• Ensure consumers can switch between communications providers by removing unnecessary barriers</li> <li>• Update content regulation to meet the changing needs of audiences</li> </ul>	<ul style="list-style-type: none"> <li>• Implement regulation to support effective competition and efficient investment in super-fast broadband</li> <li>• Ensure fair and effective competition in pay TV</li> </ul>	<ul style="list-style-type: none"> <li>• Start successful clearance of 800Mhz band to create opportunities for new services</li> <li>• Prepare plans for release of spectrum for mobile broadband</li> <li>• Ensure wireless services for the London 2012 Olympic and Paralympic Games will be delivered</li> </ul>
Ongoing major work areas	<ul style="list-style-type: none"> <li>• Ensure availability, take-up and effective use of communications services</li> <li>• Review and promote available consumer information</li> <li>• Protect consumers and audiences from harm and unfair practices</li> <li>• Understand experiences of business consumers</li> </ul>	<ul style="list-style-type: none"> <li>• Promote effective competition in fixed and mobile telecoms</li> <li>• Review regulatory rules that affect funding of content</li> <li>• Enforce competition and resolve disputes</li> </ul>	<ul style="list-style-type: none"> <li>• Support digital switchover</li> <li>• Promote efficient allocation of spectrum</li> <li>• Develop stable international framework to underpin spectrum awards programme</li> <li>• Understand network capabilities</li> </ul>
	<ul style="list-style-type: none"> <li>• Identify opportunities for deregulation and simplification</li> <li>• Prepare to implement relevant European and UK legislative changes</li> </ul>		

## Section 3

# Ofcom's approach to regulation

## Ofcom's principal duties

- 3.1 The 2003 Communications Act gave Ofcom principal duties to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 3.2 In order to successfully fulfil these duties, we have five main objectives that inform all of our work and activities. These are to:
- support and protect consumers across the UK;
  - secure citizen interests (as guided by Parliament);
  - promote competition and innovation;
  - maintain and strengthen the communications infrastructure of the UK; and
  - simplify and reduce regulation, while maximising value for money.
- 3.3 In fulfilling our duties and seeking to fulfil these objectives, we follow a set of regulatory principles that influence what we focus on in our work as well as how we work. These principles ensure that our work addresses issues effectively, and in a timely, robust and comprehensive manner. They also help us to clarify our regulatory approach to our stakeholders.

### *Ofcom's regulatory principles*

#### **When we regulate**

- Ofcom will operate with a bias against intervention, but with a willingness to intervene promptly and effectively where required.
- Ofcom will intervene where there is a specific statutory duty to work towards a goal that markets alone cannot achieve.

#### **How we regulate**

- Ofcom will always seek the least intrusive regulatory methods of achieving our objectives.
- Ofcom will strive to ensure that interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.
- Ofcom will regulate with a clearly articulated and publicly reviewed annual plan, with stated objectives.

#### **How we support regulation**

- Ofcom will research markets constantly and will aim to remain at the forefront of technological understanding.
- Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation on a market.

- 3.4 Our bias against intervention aims to ensure that we regulate only where necessary. Unnecessary intervention could distort or stifle the development of competitive and

rapidly changing markets. However, where intervention is required we will act quickly and decisively.

- 3.5 We must ensure that regulation helps, rather than hinders, the development of markets. To achieve this, our principle is to use the least intrusive regulatory mechanisms appropriate for the situation. As part of this we will also have regard to the desirability of promoting and facilitating the development and use of effective forms of self-regulation.
- 3.6 We are committed to evidence-based decision-making. This requires us to understand consumer attitudes, which we achieve through a comprehensive programme of market research, and to understand market developments, which we do through gathering and analysing market intelligence.
- 3.7 We also recognise the importance of consulting with the full range of our stakeholders, both informally as options in our work are being identified and refined, and formally through the publication of consultation documents.
- 3.8 Carrying out regulatory impact assessments helps to ensure that we follow good practice when making decisions. An impact assessment involves being clear about the issue which needs to be addressed, identifying a range of options and analysing the impacts each would have.
- 3.9 Our principal duty to further the interests of citizens and consumers makes it particularly important for us to understand how our decisions affect these groups. As consumers, we participate in the marketplace, acquiring or using goods and services. As citizens, we are concerned not only with our narrow individual interests, but with what is good for society.
- 3.10 Sometimes the interests of citizens may be at odds with the interests of (at least some) individual consumers.
- 3.11 Therefore, in making decisions, it is important that we identify both the interests of citizens and the interests of consumers. We can then understand the trade-offs which our decisions often involve. Ofcom's annual planning process seeks to set out our future work programme with this approach to regulation in mind.
- 3.12 In addition to our regulatory principles, there are several themes that are always important to our projects. These will remain important throughout our work in 2010/11:
  - Considering how our work and its outcomes relate to each nation of the UK. Ofcom's work is increasingly influenced by the implications of institutional changes and differences in the Nations.
  - Adhering to Ofcom's consumer interest toolkit as a way of ensuring that Ofcom identifies and addresses consumer interests across its work. This includes a series of questions that every internal project team should ask, to ensure that consumers are appropriately considered.
  - Open consultation with Ofcom's advisory committees and panels as we progress our work helps to ensure that our work considers a range of implications for each nation, for older and disabled people and for consumers, including the efficient use of spectrum, where appropriate.

## Section 4

# Ensuring positive outcomes for consumers and citizens

## Market developments, outcomes and Ofcom's work programme

- 4.1 Ofcom has a wide range of specific duties set out in legislation. However, all our activities and work should play a part in delivering positive outcomes for consumers and citizens in the communications sector.
- 4.2 In setting our priorities and work programme for 2010/11, we have considered how the communications sector has delivered positive outcomes for citizens and consumers. We have also considered the extent to which market and public policy developments have created new issues and areas of focus.
- 4.3 Our assessment of market developments and outcomes draws on the extensive research that Ofcom undertakes to understand fully the availability, take-up and use of services, and the concerns of consumers in the communications sector. This includes our *Consumer Experience* research and our *Business Consumer Experience* research as well as our wider annual *Communications Market* research.
- 4.4 In the following section we outline our work in a wide range of areas to date, considering the experience of consumers and citizens in each of these. We point to key issues that we aim to focus on as part of our work programme for 2010/11 – further details of our specific work are outlined in Annex 1.

## Delivering specific outcomes for citizens and consumers

- 4.5 Two key market developments have affected our work on delivering specific outcomes for citizens and consumers. Firstly, digital services have grown in importance in enabling participation in the economy and society as a whole. We have also seen the emergence of increasingly converged communications markets. This has made navigating the markets increasingly challenging for consumers and has brought a new range of consumer issues

## Ensuring availability, take-up and effective use of communications services

- 4.6 Ofcom has a specific duty to ensure that a wide range of electronic communications services, including high-speed data services and television and radio services, are available throughout the UK. In performing this duty we must consider, among other things, the needs of people with disabilities, older consumers, those on low incomes, people in the different parts of the United Kingdom, the different ethnic communities within the UK, and those living in rural and in urban areas.
- 4.7 We work to fulfil this duty by ensuring the availability, take-up and effective use of digital communications services. The primary focus of our work is to understand, and wherever possible increase, digital inclusion for citizens and consumers.

### Availability

- 4.8 Overall availability of digital communications services has been consistently high across the UK, with at least nine in ten consumers having access to fixed, mobile,

broadband and digital television services. But at the same time there continues to be the risk of a digital divide, both in terms of geographic availability, and the availability of services to specific groups of users, particularly for mobile telephony and broadband services.

- 4.9 Despite the widespread availability of mobile services, coverage of 2G voice services is not universal (98% of the population live in an area covered by at least one operator) and 3G coverage is more limited (87% of the population live in an area covered by at least one operator). We refer to the places where mobile services are not available as mobile phone not-spots.
- 4.10 Mobile services are considered important by consumers and are vital for a number of citizen benefits, such as emergency services. As mobile services are an important way of keeping in touch with others, and a way of contacting emergency services, the existence of mobile not-spots is a concern to us. Coverage issues persist in some areas, particularly in the devolved Nations. 3G coverage in rural areas remains significantly lower than in urban areas, and further large-scale build-out of 2G coverage to address not-spots on a commercial basis seems unlikely.
- 4.11 As a first step to address citizen concerns we have focused on implementing emergency mobile roaming, which allows consumers to roam onto another network to make an emergency call in areas where their own network does not have coverage. In October 2009, emergency mobile roaming became fully operational.
- 4.12 We plan to continue our work on mobile not-spots next year in order to consider ways of improving mobile coverage.
- 4.13 Despite the widespread availability of fixed broadband services, not-spots remain also in broadband - 0.4% premises are currently unable to receive even very basic ADSL services. There are also a large number of households, particularly in rural areas, that are able to receive only very slow broadband services. Around one in ten of UK households cannot currently receive 2Mbps services
- 4.14 As part of the *Digital Britain Final Report* the Government outlined its plans for a universal service commitment for broadband, to make services with speeds of at least 2 Mbps available to all households across the UK. It also set out plans to ensure that super-fast broadband networks are available to most consumers. Upon the Government's request, we have provided technical support and advice on this work and will continue to work with Government to improve broadband availability across the UK.

### Take-up

- 4.15 Despite increases in take-up of digital services across the population as a whole, take-up remains uneven across different groups of consumers. Older consumers and those in households with low incomes are much less likely than the average to have broadband service in their home.
- 4.16 As society becomes increasingly reliant on digital technology, various media and communications services are becoming an integral part of everyday life. Take-up of these services and knowledge of their use is increasingly a prerequisite to effective participation in society and in the economy.
- 4.17 Encouraging the take-up and understanding of digital services has been carried out through our media literacy programme. Our focus in this area has been on providing

leadership and working with stakeholders to promote media literacy for everyone throughout the UK. We have worked with and supported a wide range of organisations and initiatives and continue to produce research and provide information.

- 4.18 In response to the Government's *Digital Britain Interim Report*, we worked with a range of stakeholders to form the Digital Britain Media Literacy Working Group. This produced recommendations to enable the development of a clear agenda for delivery of greater media literacy.
- 4.19 In the *Digital Britain Final Report*, the Government asked Ofcom to lead the Consortium for the Promotion of Digital Participation. Promoting digital participation includes work to increase the reach, breadth and depth of digital technology use across all sections of society, encompassing availability, take-up and understanding of digital services. The National Plan for Digital Participation, which outlines plans for a social marketing programme and targeted outreach, was published on the 2 March 2010. We will continue our work with the Consortium next year to contribute to the delivery of this plan.

### Supporting consumers

- 4.20 As well as benefiting from the availability of and access to, digital services, it is important that consumers are able to engage effectively with such services. Rapidly-changing products and pricing models, and complex switching processes can create difficulties for consumers. We have worked to empower consumers by promoting the supply of information, and improving switching processes to enable consumers to benefit from the increasing range of available products and services.

### Switching

- 4.21 Consumers should be able to switch between providers without undue effort, disruption and anxiety. Where this is not the case, consumers who switch may suffer harm. Further, it may result in a lack of consumer confidence in switching processes resulting in consumers choosing not to switch. This could dampen the competitive process, and consumers will not receive the benefits from competition they should be able to expect.
- 4.22 Our work around consumer switching encompasses three key areas:

#### *Tackling information barriers to switching*

- 4.23 Information plays a key role in enabling consumers to make the most of competitive markets. If consumers are not fully informed about the services available to them, they may make incorrect decisions and be reluctant to switch. Ofcom has worked to support consumers by making available information the market does not provide effectively but helps them make choices. As part of this:
- We launched an accreditation scheme for price comparison companies to encourage up to date and accurate price comparison services. To date we have accredited three firms: *Simplify Digital*, *BroadbandChoices* and *Billmonitor*;
  - To address concerns about lack of information for broadband customers we encouraged ISPs to sign up to a voluntary code to provide relevant information to consumers at the point of sale;

- We published research into fixed-line broadband speeds in the UK<sup>5</sup>, which found that there were significant differences in the download speeds offered by internet service providers, with speeds depending on the technology used to deliver broadband and the capacity of the provider's network. We will continue with our research next year; and
- We published a range of consumer guides with practical advice on a range of issues in the communications sector including slamming, nuisance calls and how to make a complaint.

4.24 We will continue review and promote available consumer information in order to ensure consumers are able to make informed choices in the communications market.

#### *Tackling contractual barriers to switching*

4.25 In addition to information obstacles, consumers may also face contractual barriers to switching; this is where contractual terms may affect consumers' ability to switch in the market. This may be the case where terms give rise to early termination charges. Another concern is in relation to automatically renewable contracts, i.e. contracts which are automatically renewed for a new minimum contract period after the expiry of the initial and any subsequent minimum contract periods. We will continue our work to assess the impact of these contractual barriers on consumer behaviour and, potentially, competition in order to identify any harm or detrimental impact.

#### *Tackling process barriers to switching*

4.26 We also have an ongoing programme of work related to switching processes in order to ensure that they do not act as an inhibitor of consumer switching.

4.27 Over recent years, we have tackled residual issues with today's switching processes, including our work on fixed-line mis-selling, broadband migrations, mobile mis-selling and Mobile Number Portability. Our initiatives in this area have had success.

4.28 However, with an increasing move towards the sale of products in bundles, it is becoming increasingly important that Ofcom looks to the future, to ensure that processes do not inhibit consumers' ability to switch in a world of bundled product offerings as well as for single communications services.

4.29 Our research has shown that the proportion of consumers switching supplier in the bundled services market has decreased more than other services over the past 12 months (from 24% to 13%).

4.30 The prevalence of bundles could inhibit consumer switching in the longer term, because consumers currently have to navigate numerous product-specific processes if they wish to change their bundles. There are currently different switching processes for landline, broadband, mobile and pay TV services. However, a number of providers have indicated to us their wish to move to better aligned processes.

4.31 In order to address this, we have started a review of switching processes, and the extent to which they promote good consumer and competition outcomes. The aim of the review will be to develop a strategic approach to switching and to ensure that there are no undue barriers to switching.

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<sup>5</sup> [http://www.ofcom.org.uk/research/telecoms/reports/bbspeed\\_jan09/](http://www.ofcom.org.uk/research/telecoms/reports/bbspeed_jan09/)

## Protecting consumers and audiences from harm and unfair practices

- 4.32 The Ofcom Advisory Team (OAT) is the main point of contact for consumers wishing to seek advice or make complaints to Ofcom about issues in the communications market. Consumers can contact the OAT by phone, internet or post. The level of complaints is a key indicator in prioritising where Ofcom takes enforcement action.
- 4.33 The number of complaints received by Ofcom between 2008 and 2009 has decreased from about 20,000 per month to about 16,000 per month.

### Consumers

- 4.34 We have a wide range of work aimed at reducing the likelihood of harm experienced by consumers. This focuses on setting the right guidelines or regulations for service providers, and consistently monitoring and taking enforcement actions in the case of non-compliance with the guidelines and rules. The tools available to us are, generally, the introduction and enforcement of General Conditions (GCs) and general consumer protection legislation including the Enterprise Act 2002.
- 4.35 We have made progress in tackling issues affecting consumers over the past three years:
- Complaints about abandoned and silent calls have fallen significantly since their peak in late 2008. Our main tool to tackle silent calls has been issuing, and widely publicising, fines for the worst offenders.
  - Mobile mis-selling, particularly those involving cash-back schemes, has been a significant problem. When a self-regulatory code failed to stop the problem, we introduced a compulsory code, and complaints are down from their peak of over 800 in September 2007 to below 200 in October 2009.
  - Major harm, caused by premium rate services, particularly reverse-billed SMS, has been tackled by the regulatory agency PhonePayPlus. Complaints to PhonePayPlus have fallen from a high of 2,380 in April 2008 to about 800 in October 2009.
- 4.36 But some problems have been more difficult to resolve:
- Complaints about mis-selling in fixed telecoms are down from their peak of 1,200 in 2005 but remain high at 900 in October 2009, despite operators being required to comply with codes of practice and despite the presence of an active enforcement programme. In response, we have strengthened the regulations through imposing a new General Condition ('GC24').
  - Unfair contracts, particularly in relation to unduly high early termination charges, have remained the third most common source of complaints by consumers in the telecoms area. As a result we have given guidance to operators about what charges are unfair.
  - Complaints and market research show that providers are often inadequate in their handling of complaints about poor customer service, and as a result we are improving mechanisms to resolve such disputes.

We will focus on making significant progress on each of these issues.

## Audiences

- 4.37 As the regulator of the broadcast industry, we have continued to respond to the public's concerns about standards on television and radio. These standards relate to a range of matters including: harm and offence, unfair treatment, and due impartiality.
- 4.38 In the past two years we have focused on a number of serious failures by broadcasters in their handling of votes and competitions. Our work, which resulted in fines in excess of £11 million, and changes to our licence conditions, significantly reduced instances of poor compliance in this area.

### **Updating content regulation for the changing needs of audiences**

- 4.39 As consumers increasingly access and consume content across different platforms, we need to consider the implications for the regulation of content. Content regulation currently varies by platform, but with convergence, the distinctions between different platforms are blurring. It is therefore increasingly important to consumers that content regulation is clear, simple and effective. We will review the current range of content regulation in order to meet this goal.

### **Ensuring wide availability of high quality content**

- 4.40 Over the past three years, sustaining and strengthening the availability of content valued by audiences, specifically in the areas of public service broadcasting and commercial radio, has been a priority for us given our statutory duties. Our focus has been to encourage the wide availability of such high quality content for audiences, particularly in those areas most under threat.

## Public service broadcasting

- 4.41 In television, audience fragmentation (due to the increased availability of an increasing number of channels) and changes in advertising markets have challenged the business models of commercial public service broadcasters. This in turn has put commercially-funded public service broadcasting at risk, as programme budgets have come under increasing pressure and an increasing amount of audiovisual content is being consumed online.
- 4.42 Ofcom has a specific duty to review public service broadcasting (PSB) at least once every five years. In January 2009, we concluded our *Second Review of Public Service Broadcasting* in which we made recommendations to Government for actions to maintain and strengthen the quality of public service broadcasting.
- 4.43 Wherever possible, we have implemented changes to ensure that consumers and citizens can continue to receive the services that they value. Specifically, we have made changes to the Channel 3 licences, which has helped to secure the continued availability of regional news on Channel 3, and we have amended regulation on Five, to encourage a focus on better-funded UK-originated content, which is valued by viewers. We also increased Channel 4's commitment to productions made outside London, in order to promote a wider choice of viewpoints in TV content.

## Radio

- 4.44 Despite the value and popularity of radio, the commercial radio sector is facing significant challenges, due to structural and cyclical economic changes. A significant number of stations (in particular smaller stations) have become loss-making and

some radio stations have closed. We know that listeners value commercial radio services, so we have worked to support the evolution of radio.

- 4.45 We have considered requests from radio licensees to allow co-location. Co-location allows multiple radio stations to share studio premises, and hence reduce costs, while also maintaining distinctive local content.
- 4.46 The Government identified the evolution of radio as a key area within its *Digital Britain Final Report*, and consequently much of our activity in this area has been at the request of Government. In July 2009 we consulted on measures that we propose to take in relation to the regulation of commercial local radio stations, in the event that the measures proposed by Government in its *Digital Britain Final Report* were to become law. Subject to legislative change, we proposed implementing a three-tier structure for radio, allowing some regional stations to share programming if they agreed to provide a service on a national DAB multiplex. This would provide consumers with a wider choice of DAB stations. Listeners would also benefit from our proposals, which would allow stations to reduce some local programming in return for increased local news throughout the day.
- 4.47 To give the commercial radio sector the flexibility to respond to market conditions, in November 2009 we also recommended to the Secretary of State that the local radio ownership rules and the national commercial multiplex ownership rules be removed. We also recommended that local cross-media ownership rules be liberalised, in order to allow greater flexibility for local media companies to invest in content for local audiences.
- 4.48 The decision to implement our recommendations to support public service broadcasting and radio now lies with Government. We will continue to monitor developments in this area and will contribute and respond where relevant.

### **Regulatory rules and funding of content**

- 4.49 The markets that fund the creation of audiovisual content have seen significant changes as a result of the growth of digital media and the economic downturn. It is therefore important to ensure that regulation remains fit for purpose in this rapidly changing market. In doing so we will specifically focus on advertising and commercial references. This work will span both the consumer and citizen area, specifically in relation to our work in content and standards, and competition.

### **Understanding the experience of business consumers**

- 4.50 In 2009 we made it a priority to understand better the experiences of business users of telecoms services, and to assess whether Ofcom needs to do more to ensure that the needs of business consumers are met. As part of this work, we undertook a research programme to find out more about the experiences of businesses with five or more employees in relation to fixed, mobile and internet/data services, and asked them about their concerns and frustrations. We also undertook a series of workshops with businesses across the UK to find out more about the particular issues which may affect small businesses and/or businesses in rural areas particularly in Scotland, Wales and Northern Ireland.
- 4.51 Our research showed that telecoms services are becoming increasingly important to businesses, and that while businesses with five or more employees are generally satisfied with the services on offer, there are concerns in a number of areas including customer service, mobile coverage and broadband speeds.

- 4.52 We plan to conduct regular research among business consumers to maintain our understanding.

### **Promoting competition to ensure consumer and citizen benefit from wider choice, lower prices and innovation**

- 4.53 Consumers and citizens benefit from effectively-functioning competitive markets. Competition can deliver lower prices and a wider choice of goods and services and promote innovation as firms compete to attract and retain customers. In markets where competition is weak, firms may lack incentives to innovate, thereby restricting choice, and prices are likely to be higher than they would be with competition. This can result in outcomes that are not in the interest of consumers.
- 4.54 Ofcom's work on promoting effective competition in communications markets over the past three years has focused on fixed telecoms, mobile telecoms and pay-TV. We will continue to focus on these areas during 2010/11 and also start to focus on the relationship between regulation and the funding of content.

### **Promoting effective competition in telecoms**

#### Fixed line

- 4.55 When Ofcom assumed responsibility for regulating the communications sector in late 2003, the market for fixed telecoms services was characterised by consumers having a choice of suppliers, but limited choice in terms of product and services. This was because service providers were using the common set of wholesale products provided by BT, rather than investing in their own infrastructure, which would encourage innovation and enable them to offer a wider range of products and services.
- 4.56 In response to these market conditions we published our *Telecoms Strategic Review* in 2005. Our objective was to develop a fixed telecoms market that would provide consumers with value for money and a choice of high quality and innovative services. As a result of the review, BT was required to make a number of regulated wholesale products available to other providers on an equivalent basis. These requirements were put into practice through a number of Undertakings. As a result BT agreed that its access network business (Openreach) would treat its retail business in the same way as other service providers. This required BT to use predominantly the same wholesale product set that was available to third parties, thereby incentivising BT to develop high quality wholesale products. It also required BT to place most of its wholesale products in a separate division, Openreach, which operates at arm's length from the rest of BT. BT also agreed to modify its processes to make it easier for third party service providers to deploy their own services using BT's access network, by using their own equipment in BT's exchanges, in a process called local loop unbundling (LLU).
- 4.57 Since the implementation of the Undertakings, the number of LLU lines has increased significantly. Prior to the Undertakings, the proportion of unbundled lines was negligible; in 2003, unbundled lines accounted for 8,000 fixed lines, rising to 200,000 in 2005. By February 2010 there were 6.49 million unbundled lines.
- 4.58 The wide-scale deployment and take-up of LLU has increased choice and value for consumers. ISPs that have deployed LLU have been able to offer IPTV services or deploy faster broadband services using ADSL2+ technology in advance of BT. Use of LLU has also given service providers greater flexibility in how they retail services,

enabling some ISPs to offer 'free' broadband services to customers who take other services.

- 4.59 Competition has also driven lower prices, more choice and greater innovation. UK broadband adoption has grown almost three-fold in five years and consumers have benefited from increasing broadband speeds at prices that have fallen steadily over time.
- 4.60 The impact of the Undertakings and the positive outcomes for consumers have enabled us to adapt, and in some cases remove, regulation in the fixed telecoms sector, reflecting the increased levels of competition in the sector:
- In 2008 we were able to remove ex-ante regulation on BT in relation to wholesale broadband access in the 69.2% of geographic areas where four or more service providers had invested in infrastructure.
  - Following the 2006 removal of retail price controls on calls and lines, we concluded in our *Retail Narrowband Market Review* in September 2009 that the market was sufficiently competitive to remove the regulations applying to BT, giving it the ability to offer bundles to consumers and tailored packages to business customers, leading to increased choice for businesses and consumers.
  - We have updated the charge controls for Openreach's LLU products to maintain incentives for Openreach to innovate and improve service quality and to ensure that the delivery of LLU services is sustainable in the light of changes to Openreach's cost base.
  - Our work in setting charge controls for leased line services throughout 2008 and 2009 has benefitted residential and business consumers through lowering prices for leased lines which are used both by for ISPs (reducing the cost of providing broadband services) but also by businesses to connect their sites together.
- 4.61 Although there have been overall positive outcomes for citizens and consumers, we will continue to monitor the implementation of BT's Undertakings, and we will work to ensure that regulation remains fit for purpose as the market evolves and new issues emerge.
- 4.62 We recognise that the upgrade from current generation copper networks to next generation networks based on fibre, able to deliver super-fast broadband services, will raise important issues for the regulation of fixed telecoms markets.
- 4.63 We published a statement on super-fast broadband in March 2009, outlining our regulatory framework, which aims to ensure that consumers and citizens benefit from timely investment, competition and widespread availability.
- 4.64 Since then, we have since seen the start of investment in super-fast broadband networks, with deployments by Virgin Media, BT and other providers. Virgin Media launched 50 Mbps services on its network on a commercial basis in late 2008 and now has them available to almost half of UK households. It now expects to further upgrade its network to deliver 100Mbps by the end of 2010. In July 2008 BT announced that it intended to invest £1.5bn to deploy super-fast broadband to up to 10 million premises by 2012. In addition to BT and Virgin Media, new entrants are investing in super-fast broadband networks in specific geographies and new-build developments.

- 4.65 On 23 March 2010 we published two market review consultations, on the wholesale local access and whole broadband access markets, which are the first step in implementing our regulatory framework for super-fast broadband.

### Mobile

- 4.66 Throughout 2008 and 2009 we carried out an assessment of our regulatory approach to mobile. Our work was designed to assess whether our regulatory approach had delivered benefits for citizens and consumers, and what, if any, changes to this approach might be required due to market developments.
- 4.67 We concluded that competition in the mobile sector has delivered high levels of customer satisfaction and high levels of affordability, and that a full market review was not warranted at this point. We also pointed out that some groups of consumers have still not fully benefited from competition in the UK mobile sector, specifically consumers in not-spots outside network coverage areas, and consumers with particular usability needs.
- 4.68 In the context of the proposed merger between T-Mobile and Orange, we have liaised with the Office of Fair Trading and with the European Commission to ensure that the interests of the UK consumers and citizens are taken into account during the merger assessment process.
- 4.69 As part of our ongoing work, we will ensure that consumers continue to benefit from fair and effective competition as the market develops.

### **Pay TV**

- 4.70 The pay TV market has grown substantially in recent years, and is now worth £4 billion per year. Subscription revenues are now more important than advertising revenues as a source of funding for broadcasting. The industry has seen a number of significant developments, which will shape the sector for years to come. These include the emergence of new platforms for delivering pay TV services (DTT, IPTV and mobile TV) and the consolidation, restructuring and re-branding of the existing cable platform.
- 4.71 We opened a market investigation into the pay TV industry following the receipt of a submission from BT, Setanta, Top-Up TV and Virgin Media, asking us to investigate the market, early in 2007.
- 4.72 Following three consultations, we published our proposed way forward<sup>6</sup>. We will continue to focus on ensuring fair and effective competition in pay TV during the next year.

### **Maintaining and strengthening the communications infrastructure**

- 4.73 Investment in a modern communications infrastructure is a necessary pre-requisite for the delivery of services to business and residential consumers. As with competition, securing investment in infrastructure and efficient use of spectrum are therefore important goals for us, contributing to our duty of furthering the interests of citizens and consumers.

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<sup>6</sup> [http://www.ofcom.org.uk/consult/condocs/third\\_paytv/statement/](http://www.ofcom.org.uk/consult/condocs/third_paytv/statement/)

- 4.74 The overall level of investment in the communications infrastructure is encouraging. We have seen major investment in fixed telecoms infrastructure by network operators using local loop unbundling, as well as first investments in super-fast broadband services. There has been increased investment in the 3G networks supporting mobile broadband. In broadcasting we have seen investment in high-definition television services over satellite, cable and digital terrestrial television.
- 4.75 However, in order to maintain and strengthen the infrastructure, a number of key issues need to be addressed.
- 4.76 Given the potential value to citizens and consumers of services that are enabled by spectrum, and also its scarcity as a resource, managing spectrum has been a significant part of our work to ensure its optimal use. Releasing spectrum is a key part of this and continues to be a priority for us.

### **Clearing and releasing spectrum**

- 4.77 The digital switchover (DSO) of television services presents the opportunity to release significant amounts of spectrum below 1 GHz (the digital dividend) in frequency bands that are particularly suitable for broadcasting and wireless broadband applications. Given the size of the benefits to citizens and consumers from the release of the digital dividend, our work plan has sought to ensure that the spectrum released by digital switchover became available for use for new services as soon as possible. We consulted on, and outlined, our approach to the release of the digital dividend in 2006 and 2007.
- 4.78 In addition to the digital dividend, 190 MHz of high-quality spectrum in the 2.6 GHz band (2500-2690 MHz) is largely unused. The characteristics of this spectrum make it particularly suitable for the deployment of mobile networks, including networks using new technologies such as LTE and WiMAX.
- 4.79 Given the potential benefits to citizens and consumers, we decided in April 2008 that this spectrum should be released as soon as possible, and we outlined plans to hold an auction in summer 2008.
- 4.80 We also prepared plans for the liberalisation of the 900 and 1800 MHz spectrum bands, currently used by mobile operators to deliver 2G services, to allow for the provision of 3G services in these spectrum bands.
- 4.81 For a number of reasons, we have adapted our original plans for the 2.6 GHz band, the 800 MHz band and the liberalisation of the 900 and 1800 MHz spectrum.
- 4.82 We decided in June 2009 that the benefits to citizens and consumers in the UK would be maximised by harmonising the top end of the UK's digital dividend (the 800 MHz spectrum) with other European countries, many of which had started to consider their digital dividend significantly later than the UK. Harmonisation of this spectrum is likely to encourage the development of equipment such as mobile data devices in significantly greater scale, and potentially allow users of mobile services to roam between networks in different European countries. The European Commission is currently considering legislation to harmonise the technical conditions for the use of this band.
- 4.83 A consequence of the decision to harmonise the 800 MHz spectrum is that the original plans for digital terrestrial television will have to be modified. This will affect the amount of spectrum we will be able to clear and release in the 600 MHz band

(the lower part of the digital dividend), and the location and amount of geographic interleaved spectrum throughout the UK. Negotiations with neighbouring countries are currently ongoing to affect these changes, and we will consult further when we know the outcome of these international negotiations.

- 4.84 Although we had planned to release the 2.6 GHz band in 2008, we were unable to proceed with the release as planned, due to litigation.
- 4.85 As part of its *Digital Britain* reports, the Government appointed an Independent Spectrum Broker to recommend an approach to the liberalisation of 900 MHz and 1800 MHz spectrum and the release of the 2.6 GHz band. The Government is currently consulting on the majority of the Independent Spectrum Broker's recommendations, which included co-ordinating the release of the 800 MHz spectrum with some of the 2.6 GHz band and a requirement for successful bidders to relinquish some 900 MHz spectrum if they successfully bid for 800 MHz spectrum. We await a possible Direction from the Government on this matter.
- 4.86 We have also continued to release spectrum in a range of other bands, suitable for a range of applications. For example:
- We released 40 MHz of spectrum in the 1452-1492 MHz range (the L-Band) in 2008. The auction was won by the wireless technology firm Qualcomm. This spectrum could potentially be used for a range of services for consumers such as mobile TV, mobile broadband or broadcast radio.
  - We released spectrum across several bands within the 10, 28, 32 and 40 GHz ranges in 2008. This spectrum is suitable for point-to-point links, for example, to provide additional backhaul capacity to mobile networks for data-intensive services used by consumers such as mobile broadband.
  - We have also taken forward work to prepare for the release of spectrum in other bands. We have consulted on the authorisation of use in the 872/917 MHz bands. We are now monitoring developments on the use of these bands in Europe before deciding how they should be released in the UK. We are also reviewing responses to our consultation on proposals to grant Crown Recognised Spectrum Access (RSA) in the 3400 MHz to 3600 MHz spectrum bands. The granting of RSA to the Crown would enable public bodies such as the Ministry of Defence to release spectrum to new users, generating opportunities for new services valued by citizens and consumers.
  - In January and February 2009, we carried out the first two auctions of geographic interleaved spectrum that will be released as a result of digital switchover, in Manchester and Cardiff. At the time of writing, the Manchester spectrum is expected to be used by Guardian Media Group to carry its Channel M local TV service on DTT in the Greater Manchester area. Multimedia content company Cube Interactive acquired the Cardiff spectrum.

### **Liberalising and trading spectrum**

- 4.87 Many spectrum licences have historically included restrictions on the services and technology that can be deployed over the specified spectrum bands. Liberalising spectrum reduces or removes these limitations and gives licence holders greater flexibility. In addition to this, the trading of spectrum licences allows the faster introduction of new services and technologies, and encourages innovation and competition.

- 4.88 Wherever possible, and where consistent with our duties to further citizen and consumer interests, we have liberalised spectrum use.
- 4.89 We have radically simplified the categories of business radio licences, to make them more flexible and tradeable. Investment in IT systems has enabled us to increase the number of tradeable spectrum licences, (there are now over 50,000), and make it easier to trade these licences. This enables a better quality of service to customers, enabling them to add additional capacity to their networks.
- 4.90 We have also carried out work to release, and make licence-exempt, certain uses of spectrum within certain frequency bands. In July 2009, we exempted equipment that allows consumers to stream high-definition video around their home or premises, and in September 2009 we liberalised use of ultra-wideband equipment, extending licence-exempt use to vehicles and trains.

### **Other spectrum activities**

- 4.91 In addition to our work on ensuring spectrum is being put to optimal use, we also undertake work related to spectrum that supports the public interest. Work in this area includes supporting digital switchover and preparing for the London 2012 Olympic Games and Paralympic Games.

#### Digital switchover

- 4.92 We have continued to work with Digital UK to support the digital switchover of television services. Digital switchover is now complete in the Borders, Westcountry, and Granada regions, covering over 4 million or 18% of UK households, and is currently under way in Wales.
- 4.93 We will continue with our work in this area to support switchover activity throughout 2010/11, including in the North and Central regions in Scotland, where switchover starts in 2010.

#### The London 2012 Games

- 4.94 The London 2012 Olympic Games and Paralympic Games will take place between 27 July and 9 September 2012, and will be staged at various locations across the UK. Wireless applications will play an important role both in the build-up to, and during the games. Organising spectrum to support these applications will be crucial to the success of the Games.
- 4.95 Ofcom is responsible for organising a full spectrum plan for the events, licensing users and managing any interference during the events themselves. This will be the largest spectrum management exercise undertaken since Ofcom's creation. Our main objective is to contribute to a successful event by ensuring that spectrum is used effectively, with the least disruption to existing users, and by protecting spectrum users from harmful interference during the Games themselves.
- 4.96 We will also ensure that we use the experience gained through this process as part of our planning and preparations for the Commonwealth Games in Glasgow in 2014.

### **Changes to legislation**

- 4.97 In addition to wider market developments, we have also experienced plans for legislative changes

- 4.98 At the international level, we have seen the review of the European Regulatory Framework, which affects how we regulate telecoms in the UK, completed. We will work with the Government to ensure its efficient implementation.
- 4.99 At the UK level, the Government completed its *Digital Britain Final Report* and introduce the Digital Economy Bill. Both the findings of the Digital Britain report and the Digital Economy Bill set out a range of potential new tasks, powers and duties for Ofcom.
- 4.100 We have outlined the relevant clauses in the Digital Economy Bill, as brought forward following debate in the House of Lords, in figure 2 below. Subject to the outcome of the Parliamentary process, we will reflect these new responsibilities in our work. We will outline, and where relevant consult on, our approach to implementation of our new powers and duties.

**Figure 2 – Ofcom’s new powers and duties proposed by the Digital Economy Bill**

Work area	Proposed new powers and duties
Infrastructure investment	<ul style="list-style-type: none"> <li>• A duty to promote investment in the communications infrastructure, where appropriate.</li> <li>• A duty to provide an assessment of the UK’s communications infrastructure every three years.</li> </ul>
Public service content	<ul style="list-style-type: none"> <li>• A duty to promote investment in public service media content, where appropriate.</li> <li>• A duty to report on the fulfilment of the public service objectives, taking into account media services including TV, radio, on-demand services, and other services provided by means of the internet.</li> <li>• A duty to review C4C’s annual statement on media content policy (including online services).</li> <li>• A duty to report to the Government on whether the public teletext service licence remains commercially viable, and on the public value of continuing the service. Depending on conclusions, Ofcom would either continue with the relicensing process, or the Government would remove the obligation to re-license.</li> <li>• A new function for Ofcom to be able to appoint and fund Independently Funded News Consortia.</li> </ul>
Peer-to-peer file-sharing	<ul style="list-style-type: none"> <li>• A two-phased approach to tackle peer-to-peer file-sharing:</li> <li>• In phase 1, would have a role in the development and enforcement of an initial obligations Code (ISPs required to send notifications to those subscribers alleged by rights holders to be infringing copyright, and to record the number of notifications with which each subscriber is associated, and to make this data available to rights holders on an anonymised basis on request). Ofcom would also have a duty to report on the effectiveness of the initial obligations Code as requested by the Secretary of State</li> </ul> <p>In phase 2, Ofcom would carry out an assessment on the efficacy of technical measures, and submit this to the Secretary of State. Should the Secretary of State consider it appropriate to implement technical measures, Ofcom would be required to develop and enforce a Code for the imposition of technical measures.</p>
Domain names	<ul style="list-style-type: none"> <li>• A requirement to produce a report on the operation of domain name registries, at the request of the Secretary of State.</li> </ul>

Radio	<ul style="list-style-type: none"> <li>Once the Secretary of State has determined a date for radio digital switchover, Ofcom must terminate relevant analogue licences by giving two years notice to facilitate a common end date.</li> <li>Powers to renew analogue radio licences, to restructure existing local and national DAB multiplexes and to define larger areas in which programmes can be produced, thereby allowing easier co-location of stations.</li> </ul>
Spectrum management	<ul style="list-style-type: none"> <li>Allows Ofcom, in certain cases, to make regulations that apply charges, payable during the term of the licence, to certain wireless telegraphy licences allocated by auction and to require some of the payment for a licence acquired at auction to be paid to the previous holder of the spectrum.</li> <li>Powers to impose financial penalties for contravention of certain licence provisions.</li> </ul>

4.101 For both the European Regulatory Framework and the Digital Economy Bill, subject to the outcome of the Parliamentary process, our focus for the next year will be the implementation of relevant legislative changes.

### **Supporting the needs of consumers and citizens across the English Regions, Northern Ireland, Scotland and Wales**

4.102 We recognise the experiences, concerns and needs of citizens and consumers, including businesses, vary depending on where they are in the UK. A vital part of our work is to consider how issues affect consumers and citizens in different parts of the country.

4.103 We have had three main strands of ongoing activity our national offices, focused on availability and use of digital services, issues around national and local content on television and radio, as well as liaising with devolved administrations and elected representatives.

4.104 Our work programme takes account of the needs of citizens and consumers across the UK. In putting together this Annual Plan we have engaged with our Advisory Committees in England, Northern Ireland, Scotland and Wales to discuss their priorities. The priorities for the Advisory Committees for each of the English Regions, Northern Ireland, Scotland and Wales for 2010/11 are illustrated in figure 3 below.

4.105 These are covered by Ofcom's priority and ongoing work areas for 2010/11 and we outline our previous and planned work in each of these areas above and in Annex 1.

4.106 Ensuring that the experiences and needs of citizens and consumers will remain an ongoing focus underpinning our work. As part of all our activities we consider how our work and its outcomes relate to each nation of the UK. Where relevant we will strive to target our work to the specific needs of the Nations and Regions.

### Figure 3 – 2010/11 Advisory Committee priorities for the English Regions, Northern Ireland, Scotland and Wales

- The availability of current generation broadband throughout each nation and, where broadband is available, the speed at which it is available;
- The impact and timing of super-fast broadband roll-out to ensure maximum availability in each nation;
- The availability of mobile telephony signals in all areas of each nation;
- The participation by all citizens and consumers in each nation in accessing and using digital communications technology; and
- The continuing provision of national/local news and non-news programming in each nation.

### Delivering value for money to stakeholders

- 4.107 Since our inception we have achieved consecutive real-term reductions in our budget, to ensure delivery of value for money to stakeholders. 2010/11 will be no exception, despite the increasingly challenging environment in which we operate.
- 4.108 For 2010/11 our total budget is £142.5m. This includes: leading the Consortium for the Promotion of Digital Participation; planning the UK's spectrum requirements for the London 2012 Olympic and Paralympic Games; and potential work on peer-to-peer internet file sharing, subject to the provisions in the Digital Economy Bill becoming law.
- 4.109 In creating Ofcom, Parliament determined that Ofcom should inherit the pension fund liabilities of the five regulators it replaced. As a result of revaluations of assets and liabilities, Ofcom's budget for 2010/11 includes a provision for deficit repair payments into the pension schemes which were transferred to the organisation when it was created. (This is a historic problem, as only staff from legacy regulators have defined benefit pension provision. These terms and conditions were not offered to any new employees of the organisation from our inception in 2003).
- 4.110 Excluding the additional items, our core operating budget is £127.5m. On a like-for-like basis this is 3.6% lower in real terms than our budget for 2009/10.
- 4.111 This is a very challenging objective. We have set ourselves this budget to try and minimise the costs to stakeholders of funding the deficit in the legacy regulators' pension schemes arising from the recent revaluation. We believe that it is important for us to do everything we can to reduce the cost of regulation but particularly when additional costs of this kind must also be met by stakeholders.
- 4.112 In 2009/10 we have made important savings. This includes a pay freeze across the organisation, significant procurement savings, savings through property management, improved efficiencies as a result of a project to integrate Ofcom's IT systems and the decision by Government not to progress with merging Postcomm into Ofcom.
- 4.113 A programme of further initiatives is planned for 2010/11, to improve the efficiency and effectiveness of the organisation, including:

- continued rationalisation of IS server estates and environmental improvements, both to reduce cost and to contribute towards achieving our carbon footprint reduction target;
- re-tendering some of our major contracts, particularly outsourced facilities management and IS service contracts. This will reduce costs and provide greater flexibility across the mix of services provided through existing sourcing models;
- implementing further framework agreements to deliver value for money and process efficiencies, providing greater transparency and compliance in the procurement of goods and services;
- having managed service provider for temporary and agency staff. This will provide cost reductions, process efficiencies, wider choice and an increase in the quality of candidates; and
- improving the consumer, stakeholder and licensing customer experience and delivering further efficiency savings via enhanced self-serve web based functionality.

### **Delivering positive outcomes through effective regulation**

4.114 Our regulatory principles include a clear commitment to a bias against intervention. This aims to ensure that we regulate only where necessary. Excessive intervention could distort or stifle the development of competitive and rapidly changing markets. Intervention that is not accurately targeted also risks causing unnecessary or unintended consequences. Where intervention is proved to be necessary, we act decisively and consistently, while following the Better Regulation principles: being evidence-based, transparent, accountable, proportionate, consistent and targeting only those cases where action is needed.

4.115 During 2009 we have progressed various deregulatory and simplification initiatives, some of which we plan to further advance in 2010. Examples include:

- the removal of the remaining regulatory constraints in the fixed telecoms market at the retail level and the reduction of regulation at the wholesale level;
- our recommendations to Government to remove two rules related to radio ownership and the relaxation of local cross-media ownership rules;
- the relaxation of licence requirements for Channels 3 and 5 following our second public service broadcasting review;
- the completion of project Unify, delivering the upgrade and integration of our IT systems, thanks to which we can offer services to our stakeholders in a more efficient way;
- our proposals to simplify spectrum trading, making it easier for businesses to access the radio frequencies they need to use; and
- a planned review of whether current restrictions related to advertising on public service channels remain justified.

4.116 Details of our ongoing and new simplification and deregulation initiatives were provided in Annex 3 of the Draft Annual Plan<sup>7</sup>.

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<sup>7</sup> <http://www.ofcom.org.uk/consult/condocs/draftannplan1011/>

- 4.117 We remain committed to reducing and simplifying complex or unnecessary regulation, while improving the value for money that we deliver to stakeholders through realising operational efficiencies. This will remain a significant focus across all our work for 2010/11.

### **Ofcom's 2010/11 work programme**

- 4.118 Although there have been positive outcomes for citizens and consumers across the communications sector, we will continue to work towards achieving our goals and responsibilities, and will tackle new issues as they emerge.
- 4.119 Based on our analysis of outcomes to date, we have identified nine priority areas, where we want to make significant progress over the coming year. In addition to these priorities, we have a number of other ongoing areas of work, which reflect our duties. We have grouped our priorities and other work areas under three main categories: consumer and citizen; competition; and infrastructure and spectrum. Some of our work also spans across Ofcom's activities. We illustrate our work programme in figure 4 below.
- 4.120 We will ensure that priority work areas are adequately resourced, to ensure delivery of our plans. Where additional resource requirements arise in the course of the year due to unexpected developments, these priority areas will take precedence over other areas of activity.
- 4.121 But designating priority areas does not imply that the other areas of work identified for 2010/11 are not important. All the work areas described here have been identified in our planning process as essential for us to fulfil our duties. We will continue to ensure that all areas of the work programme are fulfilled to the highest possible standard.
- 4.122 Details of projects in each work area for 2010/11 are provided in Annex 1. Here we also outline a number of cross-Ofcom work areas that enable us to and support us in delivering against our work programme.
- 4.123 In 2010/11 we will also continue to deliver services to our stakeholders including keeping the airwaves free from interference, allocating telephone number ranges and providing information services as required by the Communications Act. Annex 2 outlines the specific services that we will continue to deliver to our stakeholders.

Figure 4: Ofcom 2010/11 work programme

	Consumer & citizen	Competition	Infrastructure & spectrum
Priorities for 2010/11	<ul style="list-style-type: none"> <li>• Make progress on broadband and mobile phone not-spots</li> <li>• Encourage consumers to take up and use broadband by supporting the Digital Participation Consortium</li> <li>• Ensure consumers can switch between communications providers by removing unnecessary barriers</li> <li>• Update content regulation to meet the changing needs of audiences</li> </ul>	<ul style="list-style-type: none"> <li>• Implement regulation to support effective competition and efficient investment in super-fast broadband</li> <li>• Ensure fair and effective competition in pay TV</li> </ul>	<ul style="list-style-type: none"> <li>• Start successful clearance of 800Mhz band to create opportunities for new services</li> <li>• Prepare plans for release of spectrum for mobile broadband</li> <li>• Ensure wireless services for the London 2012 Olympic and Paralympic Games will be delivered</li> </ul>
Ongoing major work areas	<ul style="list-style-type: none"> <li>• Ensure availability, take-up and effective use of communications services</li> <li>• Review and promote available consumer information</li> <li>• Protect consumers and audiences from harm and unfair practices</li> <li>• Understand experiences of business consumers</li> </ul>	<ul style="list-style-type: none"> <li>• Promote effective competition in fixed and mobile telecoms</li> <li>• Review regulatory rules that affect funding of content</li> <li>• Enforce competition and resolve disputes</li> </ul>	<ul style="list-style-type: none"> <li>• Support digital switchover</li> <li>• Promote efficient allocation of spectrum</li> <li>• Develop stable international framework to underpin spectrum awards programme</li> <li>• Understand network capabilities</li> </ul>
	<ul style="list-style-type: none"> <li>• Identify opportunities for deregulation and simplification</li> <li>• Prepare to implement relevant European and UK legislative changes</li> </ul>		

### Effectively tackling new issues that arise during the year

- 4.124 Our experience over the past years has shown that the complexity and speed of change in the communications sector will give rise to new and sometimes unexpected issues. This is particularly true in an uncertain and volatile economic climate, and with the implementation of Government's *Digital Britain Final Report* and proposed legislation. We are also seeing an increase in the number of appeals to our decisions and disputes that we have to react to and resolve; these require significant resource.
- 4.125 We intend to retain flexibility within the 2010/11 Annual Plan, in order to allow us to respond to changes and new issues arising as necessary.

## Annex 1

# Detailed work programme

A1.1 In the following section we provide details of the work that we plan to focus on in 2010/11, both for our priority and our ongoing major work areas.

## Consumer and citizen

### Priorities for 2010/11

#### Encourage consumers to take up and use broadband services by supporting the Digital Participation Consortium

- A1.2 The *National Plan for Digital Participation* was published on 2 March 2010. It outlines plans for a social marketing programme and targeted outreach, aimed at changing public behaviours across the three strands of digital participation: digital inclusion, digital life skills, and digital media literacy.
- A1.3 In the early stages of the work, it is likely that a key priority will be to increase reach (the number of people online). As more people go online, the Consortium will be able to increase its efforts to promote greater breadth and depth of use (for social and commercial transactions, participation and engagement in society).
- A1.4 The Scottish Government, the Northern Ireland Executive and the Welsh Assembly Government are represented on the Consortium and are working to establish ways to enhance the work of the Consortium in the Nations.
- A1.5 Ofcom's offices in Northern Ireland, Scotland and Wales have established media literacy networks in each of the devolved Nations. The consortium member from each Nation is represented on these networks, and the networks have extended their remit to become local 'hubs' for the promotion of digital participation. The main purpose of these hubs will be actively to promote digital participation by extending the core Consortium messages to local audiences, using local communication channels and local outreach programmes. The hubs will also engage with, inform and feed back to the Consortium via the national representative and/or the Chair of the hub.
- A1.6 Ofcom colleagues in the Nations are also involved in developing local digital participation strategies, which will contribute to the overall *National Plan for Digital Participation*.

#### Ensure consumers can switch between communications providers by removing unnecessary barriers

A1.7 Over the next year we want to make significant progress in ensuring the effectiveness of switching procedures. Our work will include:

##### *Effectiveness of switching processes*

A1.8 We have started a review of switching processes, and the extent to which they promote good consumer and competition outcomes. The aim of the review will be to develop a strategic approach to switching and to ensure that there are no undue barriers to switching. We will look at the current approach towards switching

processes and assess whether or not the different switching processes give rise to concerns about the consumer experience of switching and/or the effect on the competitive process. We will analyse the strengths and weaknesses of different switching processes, with the aim of establishing a framework for assessing those processes. We intend to issue a consultation in summer this year.

- A1.9 The scope of our work will cover both residential consumers and SMEs (with ten employees or fewer).

*Automatically renewable contracts (ARCs)*

- A1.10 We will also continue our work to assess the impact of ARCs on consumer behaviour and competition. If we find strong evidence that ARCs are causing consumer harm or having a detrimental impact on competition, we will intervene.

*Mobile number portability*

- A1.11 We consulted on proposals for changing the current consumer mobile number porting process in August last year<sup>8</sup>. Although our research indicated that the current mobile number porting process works well for many consumers, there was evidence to suggest that it could cause difficulties and delays for a significant minority of consumers. In addition, changes will need to be made to ensure that the UK process is aligned to the requirement for one-day porting across the EU, part of the New EU Regulatory Framework. We have been carefully reviewing the responses to our August consultation and intend to shortly publish our decision on the next stage for the mobile number porting process.
- A1.12 We will also reach a decision very shortly on whether there is a case for changing the way in which calls to ported mobile phone numbers are routed, and if so, whether there is a need for further regulatory intervention.

Make progress on broadband and mobile phone not-spots

- A1.13 We want to improve our understanding of the extent of not-spots, and their causes, and support initiatives aimed at tackling the problem.
- A1.14 For broadband, the Government set out its intention to deliver a universal service commitment (USC) of 2 Mbps by 2012 as part of the *Digital Britain Final Report*. We will continue to provide expertise and support to the implementation of the USC where relevant.
- A1.15 For mobile, we will seek to improve our understanding of the issues by investigating the general causes of not spots, the extent and location of not spots across the UK as well as the consumer harm resulting from a lack of mobile coverage. This may enable us to publish improved information on mobile coverage and help us support any initiatives aimed at tackling the problem. We can also use this evidence base to consider whether there are any appropriate solutions, within the scope of our duties and powers, for improving coverage.

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<sup>8</sup> [www.ofcom.org.uk/consult/condocs/gc18\\_mnp](http://www.ofcom.org.uk/consult/condocs/gc18_mnp)

## Update content regulation to meet the changing needs of audiences

- A1.16 We have been working with the Government on its approach to the implementation of the *Audiovisual Media Service Directive* into UK law. The UK legislation which implements the Directive creates a number of new duties for Ofcom. Most importantly, Ofcom is required to create a new regulatory framework for the providers of video-on-demand services, to ensure that they comply with basic standards regarding content and advertising, and to provide adequate protection for the public. During 2010/11 we will work with industry and consumers to secure, and raise awareness of, the new regulatory scheme which will follow from this consultation.
- A1.17 In addition, we will also consider more widely where, and how, content regulation needs to be adapted as the way consumers access and consume content changes particularly given increasing viewing and listening over the internet.

## **Ongoing work areas**

### Ensure availability, take-up and effective use of communications services

- A1.18 In addition to supporting the Digital Participation Consortium and making progress on broadband and mobile hot-spots, mentioned earlier as Ofcom's priorities for next year, we will also continue our work in the following areas:

#### *Review of the existing universal service obligation (USO)*

- A1.19 We will continue our work to enforce the USO and review the implementation of the Universal Service Order. We note that a key part of our work on universal service during 2010/11 will be to monitor and take account of any developments at Government and EU level which may impact the approach taken to USO or its scope (e.g. via amendments to the UK Order or EU Directive).

#### *Services for disabled people*

- A1.20 As part of our duties, we are required to have regard to the needs of disabled and older people, in carrying out our work. We consider this a very important responsibility and we engage closely with a wide range of stakeholders, including our Advisory Committee on Older and Disabled Persons.
- A1.21 In autumn 2009 we consulted on a review of TV access services. Our consultation considered the existing framework for the provision of subtitling, sign language and audio-description, in the light of economic and technical developments. This was to ensure that the Access Services Code continues to deliver access services to citizens and consumers in a proportionate and effective way. We expect to publish a statement on the outcome of our review in 2010.
- A1.22 We will review relay services, which help hearing-impaired and speech-impaired people to make and receive telephone calls. As part of this work, we will look at both the existing text relay service, which is provided under the current USO, and the possibility of enhanced or additional relay services.

#### *Easily-usable apparatus*

- A1.23 Ofcom has a duty to promote the development and availability of easy-to-use consumer equipment. While there are no powers attached to these duties, we will

continue to use our influence and work with a range of organisations to promote usability and accessibility. We will also offer support to the Government in respect of the European Commission's review of the Radio and Telecommunications Terminal Equipment Directive.

### *Media literacy*

A1.24 Our work on media literacy in 2010/11 will include:

- Continuing to carry out a programme of research which helps us identify the skills gaps and issues, directs our activity and measures our progress towards achieving our goals;
- Continuing to work with, and support, a range of partners, including education providers, UK online centres, libraries and other support networks, to ensure the promotion of media literacy among the UK population;
- Developing active media literacy networks in Scotland, Northern Ireland and Wales. These networks deliver a range of activities and events and we will continue to support their work;
- Supporting the work of the UK Council for Child Internet Safety (UKCCIS);
- Organising meetings and events for the Associate Parliamentary Media Literacy Group (APMLG). Publishing our monthly e-bulletin which enables a wide range of organisations to promote their media literacy work; and
- Sharing best practice in the promotion of media literacy across Europe and beyond.

### Protect customers and audiences from harm and unfair practices

A1.25 As in previous years, we will continue to work towards ensuring that there are appropriate consumer protection regulations and mechanisms in place, and taking enforcement action where there is inadequate compliance.

A1.26 In 2010/11 we will progress work to ensure that consumers are protected better from the potential for mis-selling of fixed-line voice services, including slamming by monitoring, and enforcing, new General Condition 24 (GC24) mis-selling rules. We will also continue to work with the Office of the Telecommunications Adjudicator to address problems of consumers being switched in error or without their consent, and we will continue our work on silent calls, which can cause consumers considerable concern and anxiety.

A1.27 New issues may emerge during the year as a result of complaints and via alternative dispute resolution outcomes; we will reserve a proportion of our resources to enable us to respond effectively to these issues.

A1.28 We will also continue consider viewers' and listeners' complaints to Ofcom relating to a number of areas such as the protection of under-18s, harm and offence, fairness and privacy, and impartiality and accuracy in news.

A1.29 During 2010/11 we will focus particularly on the areas of:

- Commercial references: this work involves supporting broadcasters in their quest to find ways to remain commercially viable, while protecting consumers and the quality and integrity of programmes (which are key to the viewer and listener experience); and

- Offensive language: we will conduct research to ensure that Ofcom's regulation of offensive language continues to reflect generally accepted standards.

### Review and promote available consumer information

- A1.30 In the next financial year we will seek to ensure that key information that enables consumers to make informed choices in the marketplace is available. We will therefore continue to support our accreditation scheme for price comparison websites.
- A1.31 In addition, we will focus on quality of service issues that matter most to consumers.
- A1.32 We have now made arrangements for the long-term collection and publication of broadband speeds data. In addition to the key metric of download speeds, we will seek to understand better the other aspects of comparative broadband performance that are important to consumers, such as upload speeds and stability of connection.

### Understand experiences of business consumers

- A1.33 Following the work conducted this year in order to better understand the experience of business consumers with five or more employees, in 2010/11 we aim to conduct our next survey, focused on very small businesses.

### Other

- A1.34 The adoption of the revised EU Framework next year will affect Ofcom's duties in relation to consumer contracts, transparency requirements as well as the ability to impose minimum quality of service obligations on communications providers. All of these are relevant in the context of particularly in relation to internet traffic management. We believe it is therefore worth initiating a discussion now about how the specific functions and duties which the EU Framework assigns to national regulators might be applied by Ofcom in this area. Consequently Ofcom will publish an initial discussion document in the late spring, seeking stakeholder input.

## **Competition**

### **Priorities for 2010/11**

#### Ensure fair and effective competition in pay TV

- A1.35 Following three consultations on the pay TV market, we published a statement setting out our proposed way forward<sup>9</sup>. We also set out our conclusions on the Sky/Arqiva Picnic proposal.

#### Implement regulation to support effective competition and efficient investment in super-fast broadband

- A1.36 In 2010 we will complete reviews of the wholesale local access (WLA) and wholesale broadband access (WBA) markets. These reviews are assessing which regulatory remedies are appropriate to support effective competition, and are reviewing the effectiveness of the regulatory remedies imposed in the earlier WLA review in 2004 (including local loop unbundling) and the latest WBA review in 2008.

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<sup>9</sup> [http://www.ofcom.org.uk/consult/condocs/third\\_paytv/statement/](http://www.ofcom.org.uk/consult/condocs/third_paytv/statement/)

Our market reviews are taking into account the extent to which super-fast broadband service deployment is likely to take place in the next four years, and assessing the appropriate regulatory approach in this developing environment.

## Ongoing work areas

### Promote effective competition in telecoms

- A1.37 In 2010/11 we will work on charge controls for local access and wholesale analogue line access lines. We will also review the charge controls for local loop unbundling and wholesale line rental, which are set to expire in March 2011.
- A1.38 We will review how we treat pension costs in regulated charges. This is a particularly important issue for BT, which has one of the largest pension schemes in the UK, and which is making large deficit repair payments to its trustees on an annual basis. BT has argued that we should take account of these payments, as part of its cost base, in the prices that we regulate. They also argue that there are precedents for this in other regulated industries.
- A1.39 The current regulatory reporting framework has been in place for over 10 years and it is showing signs of strain. During 2010/11 we plan to begin our work on a significant review of this reporting framework and gather stakeholder views on changes that are needed to ensure its ongoing effectiveness.
- A1.40 We are also reviewing mobile call termination charges. The current rules, which set wholesale call termination charges, are due to expire on 31 March 2011. In preparation for this we have initiated a market review to consider what rules should apply when the current regime ends. We plan to consult on possible remedies, including charge controls when appropriate, in early 2010.
- A1.41 In order to help operators of fixed networks negotiate new agreements, we also plan to provide guidance to clarify how the principle of reciprocity should apply where appropriate to the charges payable to fixed networks other than BT when terminating voice calls to geographic numbers.
- A1.42 Ofcom intends to carry out a strategic review of non-geographic calls in 2010/11. The current arrangements are coming under increasing strain and the system is being challenged by market developments since the framework for non-geographic calls was first introduced. The review will consider the key issues with the current regime both for retail and wholesale markets for non-geographic calls. The objective of the review is to identify any variation to the current regime that is required to ensure it continues to deliver benefits to end users and providers alike in the future. We will consult with stakeholders during 2010 to gather their views, as well as undertaking market research in relation to consumers and service providers.

### Review regulatory rules that affect funding of content

- A1.43 Our work on reviewing regulatory rules that affect the funding of content span both our work around consumers and citizens, specifically in the area of content and standards, and competition.
- A1.44 We will closely monitor market developments in the TV advertising sector, particularly in the light of any changes resulting from the contract rights renewal review by the Competition Commission and any other changes in the market structure or advertising regulations.

- A1.45 In 2010/11 we will review Ofcom's approach to regulating commercial references on television and radio. This will allow us to take into account the outcome of the Government's consultation on product placement and the wider implications of any changes to the rules governing commercial references in television and radio programming, including the rules relating to sponsorship. We will examine what regulation, if any, is now necessary, taking into account legislative requirements and our duty to reduce regulatory burdens wherever possible.
- A1.46 In 2010 we have recently consulted on whether the requirement that PSB broadcasters sell all their advertising minutage is still appropriate<sup>10</sup> and we also expect to consult on whether advertising minutage rules for PSBs and other channels should be harmonised, and if so, how.

### Enforce competition and resolve disputes

- A1.47 We will continue our work on ongoing competition investigations and disputes, and address any new issues emerging in 2010/11. Ofcom recognises the importance of its role in resolving regulatory disputes: we are under a statutory obligation to perform this function and will make adequate resources available to ensure that this function is fulfilled in a timely manner.

### Other

- A1.48 In addition to the work areas outlined above, we are planning to work on a number of other projects:
- We will undertake further analysis and work with relevant parties to develop a shared understanding of the impact of the ITV networking arrangements and the financial relationships between the licensees.
  - We will conduct BBC Market Impact Assessments as required, and work closely with the BBC Trust, in order to understand the implications for competition of the Trust's decisions, and the consequent benefit to consumers in terms of choice and innovation.
  - We will work with the Office of Fair Trading (OFT) and stakeholders to ensure that we understand the potential benefits associated with local media mergers, inputting to the OFT's analysis through local media assessments, as appropriate.
  - We will work to promote competition in the commercial radio sector by examining whether the relaxation of existing radio regulation is appropriate, and by working closely with the OFT and the Competition Commission, as appropriate, should there be any proposed mergers in 2010/11.

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<sup>10</sup> Consultation to be published before 31 March

## Infrastructure and spectrum

### Priorities for 2010/11

#### Ensure wireless services for the London 2012 Olympic and Paralympic Games will be delivered

- A1.49 Ofcom is responsible for organising a full spectrum plan, licensing users and managing any harmful interference during the London 2012 Olympic Games and Paralympic Games.
- A1.50 We will manage a number of regulatory and operational issues, including:
- the detailed division of labour between Ofcom and other entities;
  - ensuring that members of the Olympic Family have access to the spectrum they need under the Government's guarantees, while taking account of the needs of other spectrum users;
  - ensuring that our operational plan is robust enough for the scale and complexity of the Games and for any unplanned events; and
  - minimising the costs involved in operational activities and spectrum use.
- A1.51 We will continue working closely with colleagues who have organised, or are organising, similar events in Sydney, Athens, Melbourne, Beijing and the 2010 Winter Games in Vancouver. We are also co-operating closely with all relevant stakeholders.
- A1.52 During 2010/11 our further planning activities will include incorporating lessons learned from Vancouver; preparation for the test events, scheduled to take place from 2010 onwards; and the opening of applications for licences in 2011.

#### Start clearance of 800 MHz band to create opportunities for new services

- A1.53 In order to clear the 800 MHz band, in addition to the completion of digital switchover, we need to clear the digital terrestrial television's (DTT) use of channels 61 and 62, and programme making and special events' (or PSME) use of Channel 69.
- A1.54 Next year, the channel 61 and 62 clearance work will focus on engaging closely with the Government and key stakeholders to create a framework for funding, where appropriate, the parties affected by the clearance. We will look at the extent to which integration with digital switchover is possible, and will clear the channels retrospectively in areas where switchover has already been completed. Throughout the process we will engage with our international neighbours to negotiate new frequency co-ordination agreements, planning how best the changes could be communicated to viewers, and choosing the most appropriate way to co-ordinate, manage and deliver the channel clearance.
- A1.55 There are two aspects to managing the clearance of PMSE users from channel 69:
1. Make available replacement spectrum, which closely mirrors the utility of channel 69. We have identified channel 38 for this purpose.
  2. Make available funding to PMSE users affected by clearance of channel 69. We have consulted on some of the details around this funding and will work

closely with the Government to enable funding to be available as early as possible.

### Prepare plans for the release of spectrum for mobile broadband

- A1.56 Ofcom expects to undertake three tasks in 2010/11 in order to make spectrum available for mobile broadband. These are:
- liberalisation of the 900 MHz and 1800 MHz bands;
  - the award of the 2.6 GHz band; and
  - the award of the 800 MHz band.
- A1.57 Both how, and when, Ofcom undertakes these tasks depends on the conclusion of the Government's *Digital Britain* consultation regarding mobile spectrum issues and any subsequent direction to Ofcom.
- A1.58 At present, the exact manner and timing of the work required to liberalise the 900 MHz and 1800 MHz bands, and to award the 800 MHz and 2.6 GHz band licences is unclear. If the Government does direct Ofcom in relation to those issues, as it has proposed, Ofcom expects to publish a consultation on how to implement various aspects of that direction in spring 2010, followed by a statement in the autumn, together with draft regulations. Final regulations would be made in the early part of 2011 with the combined auction following shortly thereafter. Other aspects of such a direction would likely be implemented on a faster timescale, for example liberalisation of the 900MHz and 1800MHz licences might be completed before the summer of 2010, and separate award of the centre 50MHz of the 2.6GHz band before the end of 2010.
- A1.59 If, however, there is no such direction, Ofcom would still expect to undertake the work required to bring about the liberalisation and award of the spectrum, but this would require additional work, and some of it may take somewhat longer to deliver.

## **Ongoing work areas**

### Support digital switchover

- A1.60 We are working with Digital UK and the Government on digital switchover, focusing on ensuring a smooth transition to digital television.
- A1.61 In 2010, switchover finishes in Wales and moves to Scotland, where viewers in the STV North region will undergo switchover, and towards the end of the year the first parts of STV Central will begin to switch. We will support this process through our activities in licensing, spectrum management and international spectrum co-ordination work, as well as in research and regulatory activities.

### Promote efficient allocation of spectrum

- A1.62 Our work related to the release and efficient allocation of spectrum bands for new uses can be divided into three main areas of focus:

#### *Making spectrum used by the public sector available*

- A1.63 There is a significant programme of work under way looking at how spectrum used by the public sector can be made available to other uses. Our work on the

implementation of the recommendations of the *Cave Audit* and the *Forward Look*, published by Government in 2009, which sets out a strategy for the management of major public sector spectrum holdings, will take several years. As part of this process we expect to make new regulations granting Recognised Spectrum Access to public sector bodies, which is a precursor for them to trade the corresponding spectrum usage rights.

- A1.64 In addition we will also continue to work with relevant public sector bodies and stakeholders to consider whether, and how, additional spectrum that has not yet been considered may be made available for new uses.
- A1.65 We will also continue to work towards development of 'innovation licences' which will facilitate access for new uses in spectrum allocated to public sector users.

*Awarding spectrum released from the digital dividend*

- A1.66 We consulted in June 2008 on proposals for a programme of awards of digital dividend 600 MHz and geographic interleaved spectrum, in three phases. We completed the first phase in February 2009 with awards of licences for Cardiff and Manchester.
- A1.67 Our decision to align our approach to the digital dividend with the emerging European approach has affected the timing of the second and third phases. Implementing the decision requires us to renegotiate and co-ordinate international rights to use the spectrum. This will undoubtedly result in changes to the configuration of the interleaved spectrum that will be available after digital switchover. We will not know what changes will be needed until negotiations with neighbouring countries are completed. In the meantime, we propose to consult on the potential uses of the interleaved spectrum. We shall take the results into account in considering, during 2010/11, the best way of making the spectrum available.

*Promoting more efficient use of spectrum*

- A1.68 We will continue our work to promote more efficient use of spectrum that is already licensed to current users:
- We will continue to encourage better use of spectrum in the aeronautical and maritime sectors.
  - We will take action to provide better information about current spectrum use.
  - We plan to carry through our proposals for simplifying trading, on which we have recently consulted.
  - We will take stock of the current system of spectrum pricing, which has been developed over the last decade, to ensure that it is well-designed and effective. We plan to consult on our emerging conclusions and, following this, publish a statement setting out our overall future pricing framework.

Develop a stable international framework to support our spectrum agenda

- A1.69 We will continue to develop a stable international framework to underpin our spectrum awards programme. We will actively participate in relevant international fora at the bilateral, European and international levels. Specific objectives include:

- implementation of the new EU Regulatory Framework for Electronic Communications Networks and Services;
- contributing to the development of a proposed Multi-Annual Spectrum Policy Programme which is intended to provide a framework for European spectrum regulation over the next 4-5 years;
- supporting harmonising measures where justified, and promoting the application of technology- and service-neutral approaches in international fora and European spectrum decisions to facilitate spectrum availability on a common and flexible basis;
- continuing to develop international and bilateral agreements to provide regulatory certainty for our spectrum awards and for digital switchover;
- promoting effective management of public sector spectrum internationally, recognising the benefits of access to common spectrum across multiple countries; and
- preparing and negotiating European positions in order to help the UK achieve its goals at the ITU World Radio Conference in 2012.

#### Understand network capabilities

A1.70 We plan to ensure that on an ongoing basis we maintain as accurate as possible a picture of the UK's communications infrastructure. The *Digital Britain Final Report* proposed to give us a new infrastructure-reporting duty, which would require us to do this, but we believe that in any case our existing duties give us some responsibilities in this area. We are considering publishing as much of the data we collect as possible, consistent with the need for commercial confidentiality.

#### Other

A1.71 In addition to the priorities and ongoing areas outlined above, we are planning to work on maintaining and finalising our regulatory framework as high definition services begin to become available on the digital terrestrial platform across the UK.

#### **Identify opportunities for deregulation and simplification**

A1.72 We have a statutory duty to report on how we have avoided imposing unnecessary burdens, and removed burdens that have become obsolete. We discharge this duty through our annual *Simplification Plan*, which outlines where we have removed administrative burdens and deregulated in major areas.

A1.73 We aim constantly to improve our approach on regulation. We believe that there is further scope to ensure even greater accountability and robustness in the way we regulate, and are currently looking at ways to improve our impact and regulatory impact assessments, and the way we measure outcomes. We expect to consult on our proposals in spring 2010.

#### **Prepare to implement relevant European and UK legislation changes**

A1.74 In 2010/11 we will focus on the implementation of the European Regulatory Framework and provide technical support to the Government as it prepares to implement that Framework.

A1.75 We will also prepare to implement any other legislative changes as relevant.

## Other ongoing work supporting and enabling Ofcom's fulfilment of duties and objectives

- A1.76 In addition to the work areas outlined above, Ofcom's work in the Nations and at European and international level supports us in fulfilling our duties and objectives.
- A1.77 Over the next year, we plan to:
- ensure that Ofcom activities take into account the needs and concerns of consumers and citizens living in each nation of the UK and their political representatives – whether at Westminster, within the devolved institutions or at a more local level - through our office presence in each nation, and through advisory committees and other representation;
  - continue to engage in the development of international regulatory frameworks within which the UK, Ofcom and our stakeholders operate, to ensure that they are practical, proportionate and best serve the interests of UK citizens and consumers;
  - continue to work with communications regulators in other European countries, the ITU and the OECD, to pursue, where appropriate, a coherent and coordinated approach to international communications services regulation. Key areas of focus include, next generation access, consumer enforcement, including cross-border, the future of universal service, termination rates, business services, roaming digital literacy, net neutrality and challenges around online content;
  - in particular, support the work of the new Body of European Regulators in Electronic Communications (BEREC), which has replaced the European Regulators' Group (ERG) by contributing to all of the projects in its work programme, and by supporting the setting up of the new secretariat ("The Office");
  - input into the development of the European Commission's Digital Agenda and the subsequent legislative and non-legislative actions which directly affect UK stakeholders, to ensure that consumers and citizens remain at the heart of this agenda;
  - and share relevant examples of best practice to help inform our own work and strengthen our relationships with key regulatory counterparts around the world, including the US, India and China.
- A1.78 Supporting our overall work programme, we will also work to develop a clear view on:
- how the communications sectors are likely to evolve over time;
  - what implications these will have for consumers and citizens, both positive and negative; and
  - what implications these developments will have for regulation.
- A1.79 We also continue to believe it is important that the most appropriate way to approach regulation for our sectors is to have an overall strategic framework that underpins Ofcom's aims, focus and priorities. We have started thinking about the format and structure of our next strategic framework that will in due course be consulted on with our stakeholders.

## Annex 2

# Providing services to stakeholders

- A2.1 Every year Ofcom receives around 270,000 requests from the public asking for advice on consumer issues in the communications market, complaining about the poor performance of a service provider, or raising a specific content issue. We take direct enforcement action on behalf of a variety of stakeholders; for example, in keeping the airwaves free from interference.
- A2.2 We issues over 250,000 spectrum licences annually, including renewals and new applications, covering satellite, fixed links, private business radio, amateur, maritime and other spectrum users. We are progressively introducing a new information services system to manage these transactions.

## Keeping the radio spectrum free from interference

- A2.3 We monitor the radio spectrum and take appropriate action to prevent harmful spectrum interference. The increasing demand for spectrum is leading to more intensive use and therefore a greater risk of interference, and we continue to improve and modernise the resources that we devote to preventing this happening and mitigating it when it does. The London 2012 Olympic Games and Paralympic Games will place a particular spotlight on our responsibilities in this area.
- A2.4 Our Field Operations team handles around 6,000 cases per year, taking action to:
- protect safety-of-life communications, including emergency services and air traffic control;
  - prevent illegal use of the radio spectrum;
  - enable legitimate use of spectrum by, for example, providing advice and assistance to spectrum users; and
  - ensure that non-compliant equipment is removed from the market.
- A2.5 Our strategy is to focus our resources on keeping the radio spectrum free from harmful interference. This has involved a wide-ranging transformation of our Field Operations team, including the organisational structure, property, vehicle and equipment strategy, volume and mix of work, people-management and culture.
- A2.6 We have begun the process of modernising our unmanned monitoring system (UMS) and our remote monitoring and direction-finding (RMDF) capabilities, used for detecting illegal spectrum use and assisting in tracking down interference sources. We have also begun upgrading the portable test equipment used by our field engineers.
- A2.7 We constantly review our operational procedures in pursuit of excellence, and have recently been awarded ISO 9001:2008 accreditation, which complements the UKAS ISO-17025:2005 certification which we already hold.

## Licensing access to the radio spectrum

- A2.8 Ofcom controls access to the radio spectrum by issuing, renewing and revoking licences. Where necessary, we make frequency assignments, perform site clearances and coordinate the use of spectrum internationally.

- A2.9 In 2009 we have further improved the licensing service by:
- adding all licensing products, including space and satellite, and auctioned licences, to the new licensing system;
  - enabling stakeholders to apply for, and receive, private business radio licences online; and
  - implementing systems to enable optimal use of spectrum in the future.

### **Dealing with enquiries and complaints from the public**

- A2.10 Ofcom's Central Operations team deals with enquiries and complaints from consumers about telecommunications services, TV and radio services, and use of the radio spectrum. Every month we answer around 17,000 phone calls, 3,000 messages via our website, 1,400 emails and 1,200 letters and faxes.
- A2.11 Consumers often complain to us about telecoms issues when they have had inadequate responses from service providers. We aim to help consumers resolve their complaints by pointing them to useful advice and information and by liaising with service providers.
- A2.12 People who are unhappy about TV and radio programmes often complain to us directly. We consider complaints relating to a number of areas such as protection of under-18s, harm and offence, fairness and privacy, and impartiality and accuracy in news. However, we do not consider issues relating to impartiality and accuracy in BBC programmes, which is the responsibility of the BBC Trust. We also deal with complaints about programme sponsorship and alleged commercial influence.
- A2.13 We aim to optimise the role of the Ofcom Advisory Team in providing early warning about consumer concerns. This is against the backdrop of rapidly changing communications markets; new topics of concern arise all the time and create unexpected increases in the number of complaints we receive.
- A2.14 The Customer Contact Association (CCA) is a professional body for the contact centre industry and Ofcom's Advisory Team (OAT) has just achieved full CCA Accreditation, not only as a Contact Centre but also for our in-house training programme. Callers to the OAT can be assured that they are calling a team that is knowledgeable and follows procedures that represent industry best practice.

### **Allocating telephone number ranges to service providers**

- A2.15 Ofcom plays an important role in allocating telephone number ranges to communications service providers, who in turn allocate individual numbers to their customers. The number of applications received from service providers grows steadily. We are now processing in excess of 2,000 applications every year.
- A2.16 As part of our strategic review of telephone numbers, we established the following principles governing numbering:
- the numbers consumers want should be available when they are needed;
  - the numbers consumers currently use should not be changed if this is avoidable;
  - the understanding that consumers have about certain types of numbers – such as 080 numbers being freephone – should be maintained;
  - our number allocation processes should support competition and innovation; and

- consumers should not be exposed to abuse.

A2.17 Ofcom has applied these principles to telephone number allocation to ensure that our process is efficient, consumer-driven and market-led. We have introduced number conservation measures in additional geographic areas so that service providers can use numbers more efficiently and continue to monitor the potential risk of constraints on supply. We will review our approach to regulating number translation services (NTS) number ranges, to ensure that these provide the services that consumers value and that they are suitably protected. In making number allocations we will also continue to run a consumer protection test to ensure best use of numbers and to protect consumers from scams, fraud and other forms of abuse using telephone numbers.

### **Providing information services**

A2.18 Ofcom provides information to the public about use of the radio spectrum. This is an important contribution to the efficient coordination of spectrum use; and also facilitates the trading of spectrum licences by stakeholders.

### **Publishing market research and communications market reports**

A2.19 We will continue to publish a wide range of reports on developments in the communications sector and on the attitudes of citizens and consumers. Our series of *Communications Market Reports* cover developments in television, radio, telecoms and the internet across the UK and around the world. Our *PSB Annual Report* assesses the state of public service broadcasting in the UK and the extent to which the purposes and characteristics of PSB are being fulfilled. We will also continue to publish our annual *Consumer Experience* report, which assesses consumer access, choices, empowerment and concerns across all of the sectors regulated by Ofcom.

A2.20 Finally, we will publish all research commissioned across the year in support of Ofcom's projects and publications. Our approach to research will ensure that we are able to gather an evidence base that allows us to deliver the statutory obligations we face to promote equality. We will also comply with the Statistics Act in making our research and market statistics available in a timely way.

### **Adopting sustainable practices**

A2.21 Ofcom seeks to adopt sustainable practices throughout its policy and operational work. In light of growing prominence of environmental issues we performed an initial audit of Ofcom's carbon emissions in 2007 and subsequently committed to a reduction target of 25% by 2012/13. We have developed a programme of enhancements to meet this target and to ensure that our operations adhere to environmental best practice.

A2.22 Achievements to date include substantial energy savings at our London office, the promotion of sustainable commuting to colleagues and the attainment of Carbon Trust Standard accreditation. In 2010/11 we will turn our focus to business travel and printing and investigate further savings within Information Services.

### **Promoting equality and diversity**

A2.23 Ofcom is determined to do all we can when it comes to promoting equality and diversity inside our organisation and in the wider sectors we regulate.

A2.24 In October 2009, we introduced Ofcom's Single Equality Scheme<sup>11</sup> to promote equality in our dual roles as a significant employer and as the regulator of the UK communications industries. We are actively working towards a communications sector that is fairer, equal and diverse.

A2.25 The Single Equality Scheme sets out Ofcom's objectives in relation to equality and provides a framework, setting out a clear set of actions plans for us.

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<sup>11</sup> [http://www.ofcom.org.uk/consult/condocs/promoting\\_equality\\_diversity/ses/ses.pdf](http://www.ofcom.org.uk/consult/condocs/promoting_equality_diversity/ses/ses.pdf)

## Annex 3

# Summary of stakeholder comments

- A3.1 During our ten-week consultation period for our 2010/11 Annual Plan, we held a series of stakeholder events across the UK and we received twenty six formal consultation responses from various stakeholders. The feedback showed broad support for our proposed work programme for 2010/11. There was also general agreement that the identified priorities were the right ones for the coming year.
- A3.2 The key comments about our proposed work programme for the 2010/11 and our responses to these are summarised below. Where consultation responses raised detailed issues, questions or concerns around specific projects or pieces of work we have done or are currently doing, we have passed these to relevant project teams who will take them into account as appropriate. It is not possible for us to respond to all detailed questions in this document.

## General comments

- A3.3 One stakeholder argued that dividing our work programme into three areas (Consumer & Citizen, Competition, and Infrastructure & Spectrum) is not consistent with the Communications Act which states that Ofcom's main duty is to further interests of consumers and citizens. Although the work planned under "Infrastructure" and "Competition" implicitly will benefit consumers and citizens, it was suggested that this should be made more explicit in the Annual Plan.
- A3.4 We chose to divide our work programme into the three areas of Consumer & Citizen, Competition, and Infrastructure & Spectrum as well as priority and ongoing major work areas as a means of illustrating the range of work Ofcom does. In previous years, we have had a strategic framework that we used as a basis for outlining our work programme. As we are in the process of developing a new strategic framework (see section A1.80 for more detail) we have chosen this structure in the interim. As we outline throughout our Annual Plan, our principal duties of furthering the interests of citizens in relation to communications matters and furthering the interests of consumers in relevant markets where appropriate by promoting competition, underlie all our work.
- A3.5 Several stakeholders observed that our proposed work plan for 2010/11 is already ambitious and concerns were raised about whether Ofcom will have sufficient resources to deliver our work plan, while at the same time reserve sufficient capacity for the new duties and for unplanned work.
- A3.6 Several stakeholders also noted that disputes and litigation have become an integral part of the UK communications regulatory regime. One stakeholder in particular warned Ofcom that any cost reduction targets must be balanced against having sufficient resources for investigation, disputes, and appeals.
- A3.7 As we outline at the end of Section 4, we have seen that the communications sector will give rise to new or unexpected issues and are also seeing an increase in the number of appeals and disputes we have to react to and resolve. In our planning each year we allocate capacity for unplanned work and this year have also considered the need to allocate capacity in order to fulfil potential new duties and tasks stemming from the Digital Economy Bill. We acknowledge that flexibility is key

to allow us to fulfil our work plan and take care to allocate sufficient resources allow us to complete both our planned and unplanned work.

- A3.8 Several stakeholders requested a more detailed timetable of key projects and key consultations in order to enable them to better plan their engagement with Ofcom.
- A3.9 As in previous years, we have published a table of outputs<sup>12</sup> for Ofcom's work including timing of publications and key contacts, alongside this final Annual Plan.

## Consumer and Citizen

### Encourage consumers to take up and use broadband by supporting the Digital Participation Consortium.

- A3.10 Respondents were generally supportive of Ofcom's involvement in the work of the Digital Participation Consortium.
- A3.11 Two stakeholders made specific comments on take-up of broadband among disabled people and recommended that the work of the Consortium should target explicitly people with disabilities.
- A3.12 Ofcom always considers the needs of disabled people in the work it undertakes and will ensure this is also the case in the work of the Digital Participation Consortium.

### Ensure consumers can switch between communications providers by removing unnecessary barriers

- A3.13 Several respondents provided views on Ofcom's planned strategic review of switching. One stakeholder argued that a single migration process for broadband and narrowband fixed services should be established. Another respondent argued that a unified approach to switching between different types of services may not be appropriate and suggested a coordinated approach be adopted instead.
- A3.14 Our strategic review of consumer switching aims to ensure that there are no undue barriers to switching now or in the future. As part of that review, we will look at the current approach towards switching processes and assess whether or not the different switching processes give rise to concerns about the consumer experience of switching and/or the effect on the competitive process. We will analyse the strengths and weaknesses of different switching processes, with the aim of establishing a framework for assessing those processes. We intend to issue a consultation in summer this year.
- A3.15 Several respondents suggested that Ofcom should coordinate various work streams such as mobile number portability (MNP), strategic review of consumer switching, or broadband migrations in order to avoid duplication and in order to provide a coherent new regulatory approach to switching.
- A3.16 One stakeholder noted that Ofcom's work on mobile number portability is already behind the timetables outlined in August 2009 consultation. A serious concern was expressed that the recent EU decisions on one-day porting brings the risk of further delay, which should be avoided.

<sup>12</sup> [http://www.ofcom.org.uk/about/accoun/reports\\_plans/annual\\_plan1011/projects/](http://www.ofcom.org.uk/about/accoun/reports_plans/annual_plan1011/projects/)

- A3.17 Several respondents to our August consultation highlighted the linkages between the review of consumer switching and mobile number porting. We have been considering this issue carefully particularly in deciding whether to adopt the approach outlined in the August consultation or whether there are advantages in aligning the work on mobile number portability with the consumer switching work. The options outlined in our August consultation took account of the EU requirement for one day porting and we do not expect that decision to delay any changes to the mobile porting process. As outlined in section A1.11, we shortly intend to publish our decision on next steps.

### **Make progress on broadband and mobile phone not-spots**

- A3.18 We received a number of comments about our work on broadband and mobile phone not-spots. One stakeholder suggested that we do not sufficiently explain what we aim to achieve in the not-spots area. We were also told that the work programme should differentiate more between mobile not-spots and broadband not-spots as the set of issues and possible solutions are significantly different. Some respondents suggested that our work on not-spots should be targeted at areas of consumer harm where networks are not already addressing them. One stakeholder expressed the view that Ofcom's work in this area should not result in mandating or requiring not-spots to be filled in with new coverage requirements.
- A3.19 Our work broadband and mobile not spots as described in section A1.13, will in the first stage focus on understanding the extent of not-spots and their causes. Once we form our views on the extent and causes of not-spots, our work may evolve into more specific projects. We will engage with stakeholders and communicate our plans in due course.

### **Update content regulation to meet the changing needs of audiences**

- A3.20 One stakeholder stressed that Ofcom should work with content providers to raise their awareness of the new regulations resulting from implementation of the EU Audio-visual Media Services (AVMS) Directive.
- A3.21 We will be working with ATVOD to support their work in this area, as appropriate.
- A3.22 One stakeholder argued that certain content regulations relative to subtitled, signed, and audio-visually described programmes should be extended to new media such as VoD or digital television.
- A3.23 The legislative requirements as to the provision of signed, subtitled, and audio-visually described content on VoD services are not the same as in the case of traditional broadcast media. However, we will be working with ATVOD to ensure that they encourage VoD providers to consider provision of access services.

### **Ensure availability, take-up and effective use of communications services**

- A3.24 Two respondents welcomed Ofcom's plans to review the Universal Service Obligation. One respondent suggested that the review should be an opportunity to lift outdated obligations.
- A3.25 Ofcom will continue to enforce the USO and review its implementation. We will also take account of any developments, for example at Government and EU level, which may impact the approach taken to USO or to its scope.

- A3.26 One stakeholder told us that following the digital switchover certain broadcasters ceased their provision of teletext services which were highly appreciated by dual sensory impaired people. It was suggested that Ofcom should seek advice from stakeholders as to what text services are suitable for vision and hearing impaired people and seek to influence broadcasters to ensure their services match these requirements.
- A3.27 We will consider this issue in the course of our work to encourage the availability of easily usable equipment.
- A3.28 One stakeholder expressed concern that any proposal for enhanced or additional relay services should be accompanied by an appropriate impact assessment.
- A3.29 In reviewing relay services, which help people with hearing- or speech- impairments to use telephone services, Ofcom will of course consider potential impacts.
- A3.30 On the issue of accessibility of communications services, one stakeholder highlighting that Ofcom does not have powers to mandate features of manufactured goods, suggested that we should support EU work on anti-discrimination legislation and on access to goods and services.
- A3.31 Our powers are limited in this area, and stakeholders may wish to consider engaging directly with Government. However, we continue to work with a wide range of stakeholders, including industry, to seek to encourage the availability of easy-to-use communications equipment. We are also working with other EU regulators to better understand the availability and accessibility of services and end-use equipment to consumers with disabilities in Member States.
- A3.32 One stakeholder commented that our description of media literacy work was not broad enough and that Ofcom should put clearer emphasis on the critical, creative and cultural elements which are a core part of developing media literacy.
- A3.33 Our media literacy work around people's critical evaluation and production of content will continue, both through our research and supporting partners, as appropriate.

### **Protect consumer and audiences from harm and unfair practices**

- A3.34 Several stakeholders raised concern about Ofcom's additional charges work. Some commented that Ofcom has published the guidance but it was suggested that Ofcom was unable to apply it as the issue had been returned to Ofcom to reconsider in light of the Supreme Court decision on bank charges (OFT vs. Abbey National PLC).
- A3.35 Since publication of our guidance we have been engaged in an ongoing compliance programme involving extensive discussions with a number of communications providers. That programme will continue. We have also had to consider the impact of the judgement handed down by the Supreme Court in the OFT Banks charges case (the Judgement). On 5 March 2010, we updated our website to reflect the fact that we are reviewing and, if necessary, updating the Guidance in light of the Judgement. We will continue to communicate updates through our website and/or the Competition and Consumer Enforcement Bulletin, and will also continue, or pick up, direct engagement with a number of providers to ensure they comply with the law.

- A3.36 One stakeholder welcomed Ofcom's plan to look closer at the handling of consumer complaints by communications providers but at the same time raised concerns that any collected data from operators may be impossible to compare and also had significant reservations as to the relevance of reported complaints.
- A3.37 We have recently completed the Review of Consumer Complaints Procedures consultation<sup>13</sup> and we will take stakeholders' input on board in the next stage of our work. We will publish a statement setting our conclusions from the consultation in second quarter of 2010.

### **Review and promote available consumer information**

- A3.38 One stakeholder proposed that Ofcom should take a step back and rather than examine how to make information available, Ofcom should do more work to understand the value and use of information in real consumer decision-making.
- A3.39 We have recently started to examine the potential application of behavioural economics in identifying how consumers make their decisions and how they use available information. We intend to apply this type of analysis in our work, where appropriate.
- A3.40 Some stakeholders pointed at different specific gaps in consumer information that should be addressed. One respondent was concerned that after Ofcom's decision to withdraw Topcomm (which sought to provide comparable quality of service information to consumers) there is a gap that needs to be filled as a matter of priority.
- A3.41 We consulted fully at the time of the decision to withdraw Topcomm. Ofcom recognises the potential value of quality of service (QoS) information in helping to empower consumers in the communications market. However, it is important that Ofcom focuses on those QoS issues we know matter to consumers and where our intervention is likely to have the most impact. We are therefore undertaking a two year programme of research into fixed line broadband speeds (following last year's research publication) and are now intending to measure mobile coverage to see whether there is scope to provide improved information to consumers. We will also shortly set out our thoughts around the customer service aspect of QoS information, following some research conducted last year.

### **Understand experiences of business consumers**

- A3.42 Stakeholders welcomed our commitment to business consumers and in particular they welcomed that next year Ofcom will pay special attention to the needs of small businesses.
- A3.43 In addition to this, two stakeholders pointed that an important work covering needs of large business has been undertaken by the European Regulators Group (ERG). These stakeholders urged Ofcom to continue to contribute to this work within the recently created Bureau of European Regulators of Electronic Communications (BEREC).

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<sup>13</sup> [http://www.ofcom.org.uk/consult/condocs/complaints\\_procedures/](http://www.ofcom.org.uk/consult/condocs/complaints_procedures/)

- A3.44 The work on high-end business consumers started by the ERG last year will continue this year as a major work area for BEREC. Ofcom leads this work for BEREC.

### Other comments

- A3.45 One respondent recommended that Ofcom should take a step back and conduct research to understand consumer experiences and expectations of the internet. Such research should reveal what content, what freedoms, and what protection consumers want.
- A3.46 Ofcom conducts a substantial programme of research to understand people's relationship to media and telecommunication services, people's media preferences, attitudes and concerns including those related to privacy and security. This programme of research will continue to scrutinise the issues raised by the respondent, building on publications in 2009 such as *Citizens' Digital Participation*<sup>14</sup>, *How People Assess Online Content and Services*<sup>15</sup>, *The regulation of video-on-demand: consumer views what makes audiovisual services "TV-Like"*<sup>16</sup> and the Media Literacy Audit / Tracker reports.
- A3.47 One respondent suggested that Ofcom should make development of community media across the UK one of its priorities for 2010/11.
- A3.48 Local and community media remain an important issue within of our ongoing work. In particular, we are currently consulting on potential uses of 600 MHz band and Geographic Interleaved Spectrum<sup>17</sup>, among the most likely of which are digital terrestrial television at UK, national, regional and/or local level.
- A3.49 One respondent suggested that alongside some deregulation proposed in a consultation last year by the DCMS, Ofcom should clarify its position with regard to the licensing programme for additional community radio stations.
- A3.50 Community radio has been a success since its introduction. We are nearing completion of the eighth region (London) which will conclude the second round of community radio licensing. Following this, we expect to make an announcement with regard to whether and how to run a third round of licensing.
- A3.51 One respondent noted that since the market do not always cater effectively for minority groups, Ofcom should promote "competition with a conscience". Another respondent wished to see in Ofcom Annual Plan reassurance that our deregulatory measures will not compromise the consumer protection.
- A3.52 As stated in the Communications Act 2003, Ofcom's primary duty is to further interests of citizens and consumers, where appropriate by promoting competition. When carrying out our duties, we are also required to have regard to the needs of the elderly, those with disabilities and those on low incomes.

14 [http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/medlitpubrssi/cdp/](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrssi/cdp/)

15 [http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/medlitpubrssi/assess\\_online\\_content/](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrssi/assess_online_content/)

16 <http://www.ofcom.org.uk/research/tv/reports/vodresearch/>

17 [http://www.ofcom.org.uk/consult/condocs/600mhz\\_geographic/600condoc.pdf](http://www.ofcom.org.uk/consult/condocs/600mhz_geographic/600condoc.pdf)

## Competition

### Implement regulation to support effective competition and efficient investment in super-fast broadband

- A3.53 One respondent noted that given the Ofcom's proposed new duty to promote efficient investment, the work related to super-fast broadband should sit under infrastructure and spectrum rather than under competition.
- A3.54 Currently our planned work related to super-fast broadband is focussed on the wholesale local access and wholesale broadband access market reviews and therefore we view it as competition work. Once the new legislation confirms our new duties, we will consider whether this remains appropriate.
- A3.55 It was also suggested that Ofcom should take a more active role in coordinating the evolution of "unified approach to market development" as there is a risk that the market will develop with "islands" of differentiated technologies which capture customers and restrict their choice.
- A3.56 One stakeholder stressed that Ofcom should ensure that while promoting the deployment and competition in super-fast broadband, we avoid creating a new digital divide.
- A3.57 We are currently in the process of gathering inputs from various parties as part of the wholesale local access and wholesale broadband access market reviews and will consider issues such as those outlined by respondents above. We expect to form views later in 2010 and publish statements.

### Promote effective competition in telecoms

- A3.58 Several stakeholders asked us to explain in more detail our programme relative to the transposition of the directives forming the new EU Telecoms Package.
- A3.59 The transposition of the new EU directives into UK law will be driven by Government. We will continue to provide expertise and support to Government throughout the implementation process.
- A3.60 One respondent welcomed our planned review of the way we treat the BT pension plans and suggested treatment of pension plans should be aligned with that of other utility infrastructures but also that its accounting separation and regulatory reporting should be similarly aligned and tightened up.
- A3.61 As part of Ofcom's review into the appropriate treatment of pension costs, we are considering the approach taken by other UK regulators. This involves identifying the circumstances of the relevant regulated companies and any differences in the relevant duties of the regulators. In our first consultation<sup>18</sup>, we noted that there is no single approach applicable to all regulated companies. We have received a mixed response as to whether decisions made by other regulators should inform our decision. We will be responding to this, and other issues in our second consultation, due out later this year.

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<sup>18</sup> <http://www.ofcom.org.uk/consult/condocs/btpensions/>

- A3.62 One respondent argued that we should reappraise the way in which the efficiency of a regulated firm is assessed when setting charge controls.
- A3.63 We consider that we have used appropriate methods to assess relative efficiency when setting previous charge controls but will give further consideration to this issue in future charge control projects.
- A3.64 Two stakeholders recommended that Ofcom should develop a framework that will require Openreach to hide cables underground, in a similar way as Ofgem did with regard to electricity companies.
- A3.65 While we are sympathetic to this issue, we do not have statutory powers to impose such obligations on network operators.
- A3.66 Several stakeholders welcomed our plans to review the Number Translation Services market. We have passed specific comments made by respondents to relevant colleagues in Ofcom. As part of the NTS market review, we will seek stakeholders' input in due course during 2010/11.
- A3.67 One respondent told us that Ofcom should seek to influence BEREC's work in order to ensure that EU operators with significant market power in their respective markets to open up for competition. The same respondent said that Ofcom should promote equality of access across the EU and effective remedies that work across the marketplace.
- A3.68 The newly formed BEREC will be considering appropriate access remedies across the EU this year and Ofcom leads this work for BEREC.
- A3.69 One respondent argued that excessive regulation currently hinders investment in mobile sector and at the same time expressed disappointment that no deregulatory or simplification plans for the mobile sector were proposed in the draft Annual Plan.
- A3.70 We have indicated in the Mobile Sector Assessment<sup>19</sup> statement that the competition in the mobile sector works generally well and delivers benefits to UK consumers. We have also concluded that promotion of sector competition (rather than increasing regulation) should remain the primary means of addressing concerns and achieving good market outcomes. We currently do not have plans for further deregulation in the mobile sector.
- A3.71 The issue of mobile call termination was raised by two respondents. One respondent urged Ofcom to complete Ofcom's own part of work by autumn. Another respondent strongly advised that Ofcom should follow the European Commission's recommended approach to setting mobile call termination rates through the less intrusive pure long run incremental cost (LRIC) approach.
- A3.72 Our consultation on the mobile call termination market review (as of the time of publication of this plan, expected to be published shortly) considers how mobile call termination prices should change after March 2011. We plan to conclude the market review with a statement in the second half of 2010.
- A3.73 Regarding the merger between T-Mobile and Orange, one respondent expressed the view that this merger raises serious competition concerns and Ofcom should specify what we mean by "monitoring the effect of potential consolidation". Another

<sup>19</sup> [http://www.ofcom.org.uk/consult/condocs/msa/statement/MSA\\_statement.pdf](http://www.ofcom.org.uk/consult/condocs/msa/statement/MSA_statement.pdf)

stakeholder formed a view that wholesale access to mobile infrastructure should be required, particularly in light of the T-Mobile / Orange merger.

- A3.74 The reviewing competition authority, the European Commission's Directorate General for Competition, has reached the conclusion that the merger does not raise significant competition issues<sup>20</sup>. During the merger assessment process, we have liaised with the Office of Fair Trading and with the European Commission to ensure that the interests of the UK consumers and citizens are taken into account. We will continue to monitor the level of competition in the mobile sector as part of our statutory duties.

### **Enforce competition and resolve disputes**

- A3.75 One stakeholder expressed a view that various judgements have had an impact on the common understanding of Ofcom's role and therefore, a new set of guidelines for Ofcom's handling of disputes and complaints is now needed.
- A3.76 We note this comment and we are considering the revision of our guidelines for complaints and disputes.

### **Other**

- A3.77 One stakeholder Ofcom should do a more detailed exploration of how effectively competition is delivering benefits in the different Nations and Regions.
- A3.78 We continue to monitor the consumer outcomes of competition across the UK. Ofcom's annual Communications Market in Nations and Regions report, published in the summer explores in detail whether the competition delivers benefits in different Nations and Regions.

## **Infrastructure and Spectrum**

### **Start clearance of 800 MHz band to create opportunities for new services**

- A3.79 Regarding the clearance of the 800 MHz band, one stakeholder representing the film industry noticed that it is crucial that decisions implemented by Ofcom meets the needs of the PMSE users. In particular, the provision of funding to enable migration to different frequencies, and the proposed timetable for such migration need to be constructed in such way that they do not disrupt the wealth of filming activity.
- A3.80 We received over 300 responses to our consultation<sup>21</sup>, in August 2009, on the details around the funding arrangements for PMSE users clearing channel 69. Many respondents expressed similar views, and we have taken those on board in developing our proposals for moving PMSE from channel 69 to alternative spectrum and making available funding to support this move.
- A3.81 One stakeholder suggested that during the award of the PMSE band manager license Ofcom should ensure that the new band manager is required to make spectrum available to community TV companies as well as to PMSE users.

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<sup>20</sup>

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/208&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>21</sup> <http://www.ofcom.org.uk/consult/condocs/pmse/pmse/>

- A3.82 We expect to publish decisions on the award of spectrum to a band manager with PMSE obligations shortly after the publication of this 2010/11 Annual Plan.

### **Prepare plans for the release of spectrum for mobile broadband**

- A3.83 Several respondents requested more detail about Ofcom's role in the Government's plans around the release spectrum for mobile broadband.
- A3.84 Two stakeholders called for a quick release of spectrum. They argued that Ofcom should proceed with auctions with minimum delay as the shortage of spectrum will significantly increase the cost of delivering services and will constrain operators' ability to deliver certain services.
- A3.85 We have provided more details on our plans in Annex 1, paragraphs A1.56 – A1.59.

### **Understand network capabilities**

- A3.86 Several respondents expressed their support to the fact that the proposed Digital Economy Bill would give Ofcom a duty monitor UK communications infrastructure.
- A3.87 One respondent commented that Ofcom should go beyond reporting and develop a comprehensive overview of how that infrastructure operates and its capabilities, as well as to re-think the type of regulation appropriate for that infrastructure.
- A3.88 While we are preparing for potential new duties we will only be able to lay out our approach in detail after the completion of the legislation process.
- A3.89 Two respondents called for Ofcom to engage in and do work on smart metering, given the Government's energy smart metering programme.
- A3.90 We are liaising with Ofgem and with the Government and will support their work on smart metering, as appropriate.

### **Other comments**

- A3.91 A number of respondents referred to the importance of the Government's Digital Economy Bill, and asked for more detail on what Ofcom plans to do in areas covered by the Bill.
- A3.92 As we outline in section 4.107 subject to the outcome of the parliamentary process we will reflect these new responsibilities in our work. We will outline, and where relevant consult on, our approach to implementation of our new powers and duties.
- A3.93 Several respondents highlighted the need to set out a new strategic framework in order to provide more clarity and reduce regulatory uncertainty. As we outline in Annex 1, paragraph A1.79, we have started thinking about the format and structure of our next strategic framework that will in due course be consulted on with our stakeholders.
- A3.94 Several stakeholders were concerned that Ofcom does not sufficiently acknowledge in the Draft Annual Plan its duty to promote self- and co-regulation.
- A3.95 We have clarified our approach to self- and co-regulation in section 3.6. We continue to believe that the application of self- or co-regulation should be considered in the context of the incentives of industry to find workable solutions.

This needs to be assessed on a case-by-case basis and we continue to work with stakeholders to design the least intrusive solutions possible consistent with our Better Regulation principles.

- A3.96 Two respondents pointed out that Ofcom does not acknowledge its environmental duties as outlined in the Defra guidance and that Ofcom's work programme should include a work strand to discharge these duties.
- A3.97 We are exercising our duties in full compliance with existing law and in particular with the Defra guidance on 'Duties on relevant authorities to have regard to the purposes of National Parks, Areas of Outstanding Natural Beauty (AONBs) and the Norfolk and Suffolk Broads' published in 2005.