



BT's response to Ofcom's Draft Annual Plan 2012/13 consultation

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Introduction and summary

1. BT relies upon Ofcom's Annual Plan not only to help us understand Ofcom's strategic direction, but also to help plan the efficient deployment of our own regulatory and commercial resources.

2. The backdrop to next year's plan is a communications market evolving rapidly, consolidating and converging, with increasing numbers of consumers buying triple-play bundles and using new converged services such as watching TV online, both via fixed and mobile networks. High-speed fixed-line broadband networks are rolling out at pace and next generation technologies are replacing legacy systems. Regulation must be able to keep pace with these technological and market developments and ensure that any new bottlenecks, for example, in relation to TV content and spectrum, are adequately addressed and that any regulation no longer needed is removed.

3. In general, we support the programme of work set out in Ofcom's draft annual plan and believe it identifies the key programmes for the year ahead. We have set out our detailed comments further below but would highlight an important general concern:

- In our response to last year's draft annual plan, we supported Ofcom's plans to reduce costs but drew attention to the risk that Ofcom's resources could become stretched. We believed it was important that Ofcom was able to complete major market reviews on time and be able to keep pace with market developments. There have been noticeable delays to certain projects this year, including for example, WLA/LLU and ISDN30 charge control reviews, BCMR, NGCS review, Consumer Switching and Battery Back-up. In previous years, Ofcom published quarterly updates of its programme of work but this appears to have stopped. Clearly, there will be various reasons for the delays but overall it raises the question whether Ofcom has sufficient resources to complete the programme of work and keep pace with the markets. The uncertainty over timescales does make resource planning more difficult and we believe re-instating the quarterly updates of the programme of work will help stakeholders understand project timings more broadly. Equally, it is not clear whether the projects categorised as priority work in the draft plan are also prioritised in terms of resources and delivery, and it would be beneficial if this was clarified.

Detailed comments

4. Pay TV

Ofcom's five annual plans from 2007/8 to 2011/12 confirmed that ensuring fair and effective competition in pay TV was one of Ofcom's priorities during that period. Notwithstanding Ofcom's Pay TV Statement of 31 March 2010 and the introduction of the wholesale must-offer remedy in respect of Sky Sports 1 and Sky Sports 2, it is clear that this objective has not yet been achieved. Despite this, Ofcom is now proposing in its current draft annual plan that ensuring fair and effective competition in pay TV will not be a priority for Ofcom during 2012/13 – instead it is being categorised among "other important work". The ongoing lack of fair and effective competition in pay TV has a material adverse effect on consumers. In the circumstances, and in light of Ofcom's principal statutory duty to further the interests of consumers where appropriate by promoting competition, we believe the resolution of the competition problems in pay TV should continue to be a priority for Ofcom during 2012/13.

5. Market Reviews

Ofcom plans to undertake a Narrowband Market Review in 2012/13 including assessing call origination, geographic call termination and transit markets for the purpose of assessing the markets for wholesale calls. It would be helpful if Ofcom could clarify whether the plan is also

to review exchange lines within the Narrowband review and if not, how this is to take place. Furthermore, if the risk of carrying over inappropriate regulatory obligations to NGA is to be avoided, the Narrowband Market Review should recognise that voice services currently provided over copper will not necessarily be replicated on over fibre.

There is no mention in the draft plan of the next round of LLU, WLR, WBA and ISDN30 market reviews which we believe could potentially start in terms of preparation and calls for inputs in the latter half of 2012/13. Again, it would be helpful if this could be clarified.

6. Superfast Broadband

Under “promoting competition and investment in the delivery of superfast broadband” the importance of BT delivering its commitments including PIA and VULA is set out as the main objective. However, we believe Ofcom should ensure that new local access networks to new-build sites do not become monopolies that lock out other competing CPs, thereby forcing all consumers on any particular site to take service from a single mandated provider. We believe there should be equivalent non discriminatory access to all networks and that this should be a key objective under promoting superfast broadband. We are disappointed that Ofcom is not now planning to issue revised new-build guidelines which would have been an appropriate means to consider the issue and take forward.

7. TV White Spaces spectrum

BT supports Ofcom’s plans to progress the regulations to enable TV White Spaces (TVWS) spectrum to be opened up to new licence exempt use. Our understanding is that Ofcom aims to complete these regulations in 2012 and it would be helpful if the final plan could reflect this aim. We note also that the draft plan indicates (para 5.23) that, based on Ofcom’s observation of industry and standards activity, white space devices will be in a position to be deployed from 2014. We would suggest that 2013 would be a more appropriate date based on our understanding of market developments, and this would align to the indication given by Ofcom when its Statement on TVWS was published in September 2011.

8. Directory Information review

We understand that Ofcom is considering carrying out a review of Directory Information in 2012/13, which we support. This is not shown as a project in the draft plan but we understand that it would not happen until Q4 at the very earliest, which raises the possibility that it might not take place at all. We are concerned by the continuing lack of clarity in the directory information market following the Court of Appeal finding in June last year that USC7 was unlawful. Such a vacuum is causing uncertainty for the industry. In light of this we would urge Ofcom to undertake this review at the earliest opportunity.

9. Billing Direction review

We also understand that Ofcom is considering carrying out a review of the Billing Direction which we also support; again, this is not shown as a project in the draft plan and we would welcome clarification on when Ofcom plan to carry out the review.

10. General Conditions

At the London Draft Annual Plan stakeholder event, Ofcom was asked whether it would consider carrying out a review of the General Conditions as a number of them were felt in need of updating. Ofcom was broadly supportive of a review. We also would welcome a review of the General Conditions and with a specific focus on how they support the needs of business customers. While consumers need to be protected and supported in their relationships with their communication providers, business customers are much better informed about the services and exercise countervailing buying power.

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