

CWU RESONSE TO OFCOM'S DRAFT ANNUAL PLAN FOR 2013/14

The Communication Workers' Union (CWU) is the largest union in the communications sector in the UK representing over 200,000 employees in the postal, telecommunications, financial and business service industries.

The CWU welcomes the opportunity to comment on Ofcom's Draft Annual Plan for 2013/14. The plan looks in detail at the telecommunication and broadcast sectors and, as with last year, sets out the regulators broad plans for the postal sector. The CWU's response is in two parts. The first responds on the telecommunications and broadcast sector (the communications sector excluding postal services), the second responds to Ofcom's outline of its proposed approach to the regulation of postal services.

PART 1: REGULATION OF THE TELECOMMUNICATIONS AND BROADCAST SECTOR

1. In general the CWU is supportive of Ofcom's proposed annual plan for 2013/14 as it relates to the telecommunications and broadcast sector. The CWU would wish in particular to commend Ofcom on its inclusion of vulnerable groups when considering the provision of a wide availability of services to consumers. The CWU is pleased that Ofcom has taken steps to ensure that such consumer views and concerns are reflected within its consultation procedures and general operations.

What are your views on Ofcom's proposed priorities for 2013/14?

Strategic Purpose 1: Promote effective competition and informed choice

2. The CWU welcomes Ofcom's focus (Paragraphs 4.6-4.10) on ensuring effective investment in current and superfast broadband. However there is serious doubt, amongst commentators and the wider industry, about whether the government will meet its 2015 targets due to lack of investment and delays in the rollout of Broadband Delivery UK (BDUK) funding.¹ This investment shortfall will not only impact negatively upon effective competition in the industry but also upon consumer's ability to make fully informed choices about broadband service providers.

3. The president of the Country Land and Business Association, Harry Cotterell, said of the government's broadband targets:

1 'High-speed broadband timetable slips' –The Financial Times, 2nd August 2012,

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"We recognise that delivering this type of infrastructure is not easy, but it is unlikely the government will meet these objectives. The BDUK process is too bureaucratic and the allocation of the £530million funding too slow. It would be much simpler if the funding was allocated centrally rather than giving it directly to local authorities because they do not have the resource to plan for a superfast broadband network."² 4. According to the Department for Culture, Media and Sport's (DCMS) website approximately 50% of BDUK projects are not yet in procurement, meaning many local authorities are not likely to announce the completion of procurement and start actual delivery until at least summer 2013. This leaves just two years to meet the government targets. 5. An example of this is the Devon and Somerset broadband project, which announced a preferred bidder in October 2012. But

news in January 2013 of delays, following significant contract issues, illustrates the kind of problems that are likely to be faced elsewhere and the timescales involved. 6. The London School of Economics (LSE) has estimated a funding shortfall of £1.1 billion in the delivery of the government's superfast broadband target.³ With no indication that public funding levels are likely to increase, despite pressure from numerous stakeholders, it thus falls to Ofcom to try to address the funding gap through appropriate regulatory mechanisms to incentivise and encourage further private investment.

7. Ofcom notes in paragraph 3.19 that it will ensure that where BT holds significant market power (SMP), its competitors will have access to wholesale services delivered over its newer platforms on an equivalent basis to BT's retail arm. There is also reference to adapting regulation to the different competitive conditions in different parts of the UK. The CWU believes it is important that Ofcom looks at market dominance and opening up access to wholesale services, not only in BT, but in other companies where SMP exists within a given geographical area (particularly Virgin Media and especially after the recently announced merger deal with Liberty Global).⁴ There should be a requirement for Virgin Media and other communication providers to provide open access to their ducts if competition and choice are not to be restricted. This will help to create cost efficiencies through infrastructure sharing and therefore extend broadband further and at lower cost.

2 'Government "unlikely" to hit 2015 broadband target', PC Pro Magazine 3rd July 2012.

3 'Costs and Benefits of Superfast Broadband in the UK', London School of Economics, May 2012.

4 'Liberty Global confirms Virgin Media bid', The Financial Times, 6 February 2013.

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8. In its 2008 report on the costs of deploying fibre based broadband, Analysis Mason estimates that access to alternative infrastructure from Virgin Media and utility networks could reduce costs by up to £800 million for Fibre to the Cabinet (FTTC), and up to £5.7 billion for Fibre to the Home (FTTH).⁵

9. Ofcom notes in paragraph 4.10 that it will consider how to ensure that regulation incentivises Openreach to deliver services of the quality expected by its wholesale customers and their respective end-users. In doing so, it is important that the right balance is struck between penalties for faults (which are frequently due to poor and unpredictable weather conditions and therefore difficult to manage) and positive incentives for improving the quality of services.

10. One of the most important requirements for delivering the level of quality expected by wholesale customers in the fixed voice and broadband markets is the ability to invest sufficiently in the network to ensure it continues to be robust, well maintained and fit for purpose. Therefore incentives must give due regard to appropriate pricing mechanisms to enable adequate network investment for the benefit of all communications providers.

11. As the CWU noted in its response last year to Ofcom's Draft Annual Plan 2012/13, there is also a need for transparency of maintenance and quality of service standards as BT's physical infrastructure continues to be opened up to other communications providers. This

should also extend to minimum health and safety standards, to ensure the safety of those working on the network.

12. The CWU agrees with Ofcom's (paragraphs 4.11-4.13) that consumers must be granted the ability to make informed choices in order to ensure an effective and evolving market. The provision of accurate, comprehensive and contemporaneous information concerning broadband speeds is essential if consumers are to be confident in their selections and switching of broadband providers. This will also enable broadband speed comparisons with other countries to ensure that the UK is not falling behind its competitors.

13. In relation to consumer complaints, the CWU is still concerned that Ofcom should promote awareness amongst consumers of alternative dispute resolution schemes, and standardise procedures across the industry. This would not only address distress but would also improve the time and resource dedicated to complaints handling. According

5 'The Costs of Deploying Fibre Based Next Generation Broadband Infrastructure', Report for the Broadband Stakeholder Group, Analysys Mason, September 2008.

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to Ofcom's own research there appears to be variation in service standards between communication providers thereby prolonging the resolution of such issues for eight weeks. The publication of complaints data by itself is insufficient to meet consumers' grievances.

14. In relation to traffic management practices the CWU is concerned that, although the differentiation of services is prioritised through pricing mechanisms, other restrictions, such as slowing of download speeds for video content streaming and for content downloading between users, persist. In addition the CWU is concerned about the impact on traffic management of the sheer proliferation of broadband infrastructure works over a short space of time. BT alone is engaged in laying three million kilometres of fibre across the UK and installing 50,000 new cabinets serving three million distribution points. There is a real danger that consumption of broadband will be choked because of both the increased number of consumers accessing the network and the larger volume of traffic being generated. Therefore Ofcom should introduce appropriate minimum standards through regulatory enforcement to act against both restrictive practices and traffic overload.

15. The CWU welcomes Ofcom's clear commitment to develop and implement policies on switching processes as indicated in paragraphs 4.14-4.17. However the CWU still believes that automatically renewable contracts (ARCs or 'rollovers') to residential consumers act as a barrier to switching. For example mobile customers would prefer to be able to switch from an annual-plus contract to a monthly. The original case for ARCs as a return for previous investment has long since faded and its continued existence acts as a restrictive practice. The CWU also encourages Ofcom to continue its work as outlined in paragraphs 4.18-4.20 in reviewing additional charges in contracts for communications services (including non direct debit and early termination charges - ETCs).

Strategic Purpose 2: Secure optimal use of spectrum

16. The CWU supports the timely spectrum clearance in 800 MHz and 2.6 Ghz as proposed by Ofcom in paragraphs 4.23-4.25. The CWU is keen that the clearance and interference

mitigation activities for the 800 MHz and 2.6 GHz bands to commence as early as possible in 2013/14. Spectrum is both crucial to ensure that the UK does not fall behind our economic competitors as they continue to heavily invest public funds in broadband networks, and in extending broadband to the 'final third' where fibre is not deemed to be commercially viable.

Strategic Purpose 3: Promote opportunities to participate

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17. The CWU welcomes and is encouraged to see (in paragraphs 4.34-4.37) Ofcom's commitment to work with government and industry to promote the widespread availability of superfast broadband. Evidence shows that more activity and investment is also required to take standard 2Mbps broadband to all UK premises, and to encourage people to get connected.⁶ This research shows that between 15 per cent and 20 per cent of those who live in rural areas are unable to receive anywhere near the government's stated benchmark of 2Mbps, and even when they do it is sometimes a struggle to maintain a regular connection. At the same time, it is estimated there are still 8 million adults across the UK who have never been online.⁷ Against this background, there have been calls from commentators, including the Policy Exchange, to concentrate on extending coverage of good quality broadband and getting people to use it, rather than chasing the fastest speeds.⁸

18. A key element of Ofcom's role should be developing strategies that incentivise private investment in the UK's superfast broadband network. Ofcom should also place particular emphasis on improving superfast broadband coverage and take up. This is an effective way of addressing the UK's broadband needs and stimulating economic growth and job creation in the short term. It is essential to provide opportunities and encouragement to the millions of UK residents who have never been online, and to promote the benefits of faster broadband to all households still using standard broadband connections. In this regard particular attention must be given to developing internet literacy with older people and other vulnerable groups.

19. The CWU supports Ofcom's objective of securing the ongoing delivery and evolution of effective and efficient universal services in telecoms. The CWU believes that the time is right now for a statutory Universal Service Obligation (USO) for broadband, given the importance of broadband for economic and social participation, and the difficulty for households in rural areas to access decent broadband speeds. The CWU requests that Ofcom takes a lead in supporting this objective and promoting it within government. This issue was supported in last year's House of Lords Communication Committee's important report, recommending that:

6 'Broadband fit for Rural Growth: CLA Vision for Rural Broadband', Country Land and Business Association, September 2012.

7 'Internet Access Quarterly Update 2012 Quarter 1', Office for National Statistics, May 2012.

8 'The Superfast and the Furious, Priorities for the future of UK broadband policy', Policy Exchange, December 2012.

“...we do believe that broadcast media will increasingly come to be delivered via the internet. As and when this happens...the argument for recommending a USO becomes stronger. The Government should begin now to give this active consideration.”⁹

Strategic Purpose 4: Protect consumers from harm ²⁰. The CWU fully supports Ofcom’s work in relation to the protection of consumers from harm as outlined in paragraphs 4.38-4.43. The CWU supports the reform of non-geographic numbering and any regulatory changes that will result from Ofcom’s publication of a final statement. The CWU has outlined above under strategic purpose 1 its position on ETCs and complaints handling procedures. ²¹. In addition the CWU would request that Ofcom take more action at all levels - national, corporate, communication provider and consumer - on protection from the danger of cyber crime. In other national jurisdictions action is being taken to protect consumers, whether individuals or organisations, from cyber crime. For example, the USA is set to order stronger cyber security measures by the end of February as a number of unprecedented cyber attacks against financial institutions and energy companies have prompted many large corporations to rethink the need for government intervention. It appears this will involve information sharing and co-operation between the private sector and government and create a new voluntary set of standards for companies.¹⁰

Strategic Purpose 5: Maintain audience confidence in broadcast content

²². The CWU supports Ofcom’s commitment to providing customers with assurances on standards in paragraphs 4.44-4.52, particularly in investigating breaches of broadcast licences, investigating fairness and privacy complaints and considering statutory sanctions. The CWU repeats its request that Ofcom should investigate means of incentivising investment in quality public service content to guarantee market standards for new entrants in serving the interests of citizens, consumers and stakeholders alike.

Strategic Purpose 6: Contribute to and implement public policy defined by Parliament

²³. The CWU supports Ofcom’s continuing role in providing advice to the government and Parliament during 2013/14 as stated in paragraphs 4.53-4.60.

⁹ ‘Broadband for all – an alternative vision’ , House of Lords Select Committee on Communications, July 2012

¹⁰ ‘Obama acts to toughen computer security’, The Financial Times, 3rd February 2013.

²⁴. The CWU supports Ofcom’s proposals as outlined in paragraphs 4.54-4.57 for implementing the online copyright infringement provisions of the Digital Economy Act 2010 (DEA), especially the creation of a code, a copyright infringement tariff structure and an independent appeals body.

²⁵. In addition the CWU welcomes Ofcom’s continued duties in regard to media plurality (as stated in paragraph 4.60) and its on-going role in relation to the implementation of recommendations arising from Parliament’s consideration of the Leveson Inquiry report.

What are your views on Ofcom's proposed work areas for 2013/14?

Strategic Purpose 1: Promote effective competition and informed choice

26. In considering paragraphs 5.2-5.4 the CWU supports further proposals that would extend consumer choice and the continued development and innovation of television platforms. In particular CWU recognises Ofcom's duty to promote fair and effective competition and, as the Competition Commission concluded, that there is still a problem with effective competition in the pay TV market. The CWU fully agrees that Ofcom should decide based on its monitoring whether further regulatory action is required in this sector. Despite the growth of new entrants to the market Sky still dominates the sector for premium film and sport. Sky must be required to make its content available to other providers on a wholesale basis at prices that facilitate a greater level of competition and improved customer choice.

27. The CWU supports Ofcom's international role through the Body of European Regulators for Electronic Communications (BEREC) as described in Paragraphs 5.7-5.8, to guarantee a consistent application of regulation across Europe.

28. With regard to traffic management issues (as contained in Paragraphs 5.13-5.16), we would repeat our desire to see the introduction of appropriate minimum standards through regulatory enforcement. A minimum requirement is that network wholesale carriers should be required to demonstrate that they are not favouring their retail operations in the priority and carriage of network traffic.

Strategic Purpose 2: Secure optimal use of spectrum

29. The CWU supports Ofcom's role (as stated in paragraphs 5.17-5.45) in ensuring a forward-looking work programme is formulated to implement a refreshed strategy for the spectrum framework. The development of ever greater spectrum bandwidth will inevitably be required as the demand for mobile data increases from consumers.

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Strategic Purpose 3: Promote opportunities to participate

30. The CWU is pleased to see that Ofcom is taking steps to ensure the adequate provision of services for consumers with hearing impairments as outlined in paragraphs 5.46-5.52. The CWU welcomes the requirement on all UK landline and mobile operators to provide their customers with next generation 'text relay' service by 18 April 2014.

31. The CWU is concerned about the digital divide for disabled and vulnerable people. We note that the Office for National Statistics (ONS) recently found that 8.12 million UK adults have never been online. To guarantee equality of access and widespread availability broadband needs to be extended to the rural and remote areas of the UK and internet literacy must be increased. The government has a 'digital champion' and there are various initiatives in place attempting to tackle this issue, but more effective policies could be devised to encourage people online. Greater investment in e-government services including e-health, education and employment could help make the internet attractive and relevant to new groups of people. A major e-literacy campaign remains necessary if older and disabled people in particular are to access the internet.

32. The CWU welcomes, as outlined in paragraphs 5.53-5.56, the measures Ofcom has taken to date to combat mobile not-spots by increasing the coverage obligations on 3G operators. The CWU also welcomes Ofcom's intent to closely monitor market developments and to consider further action in the future. This problem is particularly prevalent in rural and semi-rural areas.

33. The CWU supports Ofcom's commitment (as stated in paragraphs 5.57-5.58) to undertake further research into the effect of communications infrastructure availability on geographic areas. The CWU firmly believes that there needs to be a wider strategy that recognises the intrinsic difficulties of rural areas but that is able to exploit the opportunities afforded through the introduction of new technology.

34. The Country Land and Business Association (CLA) has calculated in a paper¹¹ published in September 2012 that between 15 per cent and 20 per cent of those who live in rural areas are unable to receive anywhere near the government's stated benchmark of 2Mbps. This evidence is supported by Ofcom's own digital mapping tool which outlines broadband speed availability across the country: <http://maps.ofcom.org.uk/broadband/>. The CLA says the government is "unlikely" to meet its target of providing 2Mbps Internet

¹¹ 'Broadband fit for Rural Growth: CLA Vision for Rural Broadband', Country Land and Business Association, September 2012

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to all by 2015, due to funding limitations, the lack of a legal requirement, and a perceived lack of understanding as to the needs of rural areas.¹² 35. The Federation of Small Businesses¹³ and CLA¹⁴ are both concerned that whilst many rural businesses, at present, do not need speeds associated with superfast broadband in order to operate efficiently, this will change rapidly in the future. They regard it as absurd that UK consumers lead the world in propensity to book online when the UK's broadband infrastructure ranks so lamentably behind our competitors. Small rural tourism businesses for example - the dominant sector in many parts of the UK - will continue to lose share to their better-connected competitors. 36. Tim Johnson of broadband consultancy Point Topic told the Westminster eForum in September 2012 that one of the big gaps in British broadband is the lack of faster connectivity in the final 10-20% of approximately 3 million UK rural homes and businesses where sub-2Mbps speeds remain the norm.¹⁵ Ofcom's own research shows that as of June 2012, 10% of all fixed broadband connections are operating at less than 2Mbit/s, and this is down from 14% in 2011.¹⁶ Although other technologies are becoming available, such as satellite broadband and 4G mobile broadband, research from Analysys Mason shows that there will need to be significant investment in terrestrial wireless or satellite antennas to extend these services to the final third of premises.¹⁷ 37. A major difference between the UK and other national internet infrastructure programmes is that in the UK it is primarily a FTTC network rather than a FTTP network as in other countries. The CWU has argued before that only a FTTP network will truly realise the full potential of the internet in terms of economic competitiveness, job creation, IT literacy and social connectivity. This has been supported in the House of Lords Select Committee on Communications report when it recommended that:

“...policy should be ultimately directed towards universal, point-to-point FTTP as this is a technology not only able to accommodate current demand, but at current rates of growth, will be able to accommodate the UK’s bandwidth demands for many decades to

12 ‘Govt will miss its rural broadband targets, says CLA’, Information Age magazine, 24 September 2012

13 ‘Broadband: Steps for an Incoming Government’, - Federation of Small Businesses, November 2010.

14 ‘Written Submission to House of Lords Select Committee on Communications ‘Inquiry into Superfast Broadband’, Country, Land and Business Association, March 2012. 15 ‘Analyst Slams UK Superfast Broadband Target as Irrelevant and Not Achievable’, ISP Preview, 11 September 2012.

16 ‘Ofcom Infrastructure Report, 2012 Update’, Ofcom, November 2012 (Updated 20 December 2012).

17 ‘The Costs and Capabilities of Wireless and Satellite Technologies – 2016 Snapshot’, Report for Broadband Stakeholder Group, Analysys Mason, October 2010.

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come...we recommend that the Government should set out an even bolder vision for broadband policy than is currently the case...we believe it is incumbent on the Government to ensure that policy and regulation in the interim guarantee that there is a clear path from any intermediate steps which may be taken to the roll-out of point-to-point FTTP and that, crucially, these steps will not serve to hinder or hold back any future upgrade.”¹⁸

38. Fujitsu has reversed its commitment for the Scottish Highlands and Islands, Wales, Cumbria and North Yorkshire in offering a FTTP network stating there was no business case. Cable & Wireless also withdrew from the pilot in Cumbria and GeoNetworks withdrew from previous commitments in Wales on a similar basis.

39. It is clear that the market alone cannot provide the ‘final third’ with superfast broadband FTTP access if left to its own devices. Only those telecoms operators who possess SMP can fully utilise their considerable economies of scale, supported by public investment, to deliver a national FTTP network not prone to interconnectivity and operability problems.

Strategic Purpose 4: Protect consumers from harm

40. The CWU supports all sections of this strategic purpose particularly ensuring efficient and effective programme standards enforcement primarily in relation to the European debates on the protection of minors.

41. In relation to paragraphs 5.60-5.64 the CWU supports Ofcom in continued monitoring and requests Ofcom to consider the introduction statutory minimum standards to maintain neutrality and internet openness. Given the increase in managed services it is no longer sufficient to leave such matters to the ‘best efforts’ of operators and providers themselves.

42. In addition, the CWU considers that Ofcom’s performance against targets should not only be measured at the year-end but reported progressively each month and subject to

annual review. As a matter of principle as much information as possible relating to quality of service should be made publicly available.

Strategic Purpose 5: Maintain audience confidence in broadcast content

18 'Broadband for all – an alternative vision', House of Lords Select Committee on Communications, July 2012.

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43. The CWU supports all sections of this strategic purpose as it confirms Ofcom's role in providing the widest possible range of broadcast services to consumers.

Strategic Purpose 6: Contribute to and implement public policy defined by Parliament

44. The CWU supports all sections of this strategic purpose especially Ofcom's participation within the government's review of the legislative framework supporting the UK communications sector through the expected white paper. In particular the CWU holds that in order to advance the interests of citizens and consumers with regards to digital inclusion in a digital society, a statutory USO for broadband should be implemented. Where this is not achievable by market forces or public funding, a universal service fund should be created and funded by all infrastructure providers and internet service providers. We would like to see Ofcom to promote a USO for broadband on this basis and lead on it with Parliament.

PART 2: REGULATION OF POSTAL SERVICES

What are your views on Ofcom's proposed priorities for 2013/14?

45. In respect of the postal service, the annual plan identifies securing the universal postal service as a priority under Strategic Purpose 3: Promoting opportunities to participate.

46. We welcome Ofcom's acknowledgement that the regulatory framework may be the key determinant in Royal Mail's long term ability to deliver the universal service, and have supported important improvements to the regulatory regime, including significant deregulation. However, we remain deeply concerned that elements of the current regulatory regime pose a grave threat to the universal service.

47. As we have made clear to the regulator, we have serious concerns about Ofcom's approach to end-to-end competition. Ofcom's decision to take a 'wait and see' approach to entry in the end-to-end delivery market risks repeating the mistakes of the Postcomm era. Regulatory intervention is necessary to impose service conditions on end-to-end competitors, without which unfair competition threatens Royal Mail's financial viability, cream-skimming profitable parts of the postal market and promoting inefficiency to the detriment of consumers.

48. The CWU consistently raised similar concerns to Postcomm about their treatment of downstream access, and it is now widely acknowledged that the very serious deterioration in Royal Mail's finances as a result was attributable to the regulator's

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failure to act in a timely manner. Ofcom should act now , before it is too late, to ensure end-to-end competition brings benefits to consumers by promoting efficiency, and does not threaten the universal service it is Ofcom's primary duty to protect.

49. We note that Ofcom has indicated its intention commence work looking at the issue of efficiency at Royal Mail. We welcome this piece of work, but question whether Ofcom's approach will be appropriate. We strongly believe that regulatory decisions need to be based on a better understanding of Royal Mail's operations and have argued that a thorough and independent assessment of Royal Mail's performance and relative efficiency is needed.

50. As we have previously argued, discussions of Royal Mail's efficiency need to be based on a clear understanding of what efficiency objectives are, and how progress towards them should be measured. We raised our concerns over Ofcom's acceptance of Royal Mail's business plan as a baseline for measuring efficiency in our submission to the regulator in December 2011.

51. Given the importance of the efficiency debate in the regulatory regime, we are disappointed that Ofcom are only now seeking to establish proper measures of efficiency. Ofcom's analysis must reflect a detailed assessment of Royal Mail's operation and include an independent review into efficiency at Royal Mail. We urge the regulator to instigate an independent investigation in consultation with stakeholders. Our views on these issues are set in detail in our submissions to previous Ofcom consultations, notably the January 2013 consultation on end-to-end competition.

52. We have also welcomed Ofcom's review of the needs of users of the postal service, and noted that the market research points to strong satisfaction with the universal service, and high value placed on postal services as a whole. However we are concerned with Ofcom's analysis of users' preferences for the future of the service and the regulator's apparent focus on reductions in the service levels - including cutting delivery days from five to six, scrapping first class mail and reducing quality of service standards - rather than protecting the current popular standards as is their legal duty.

53. We urge the Ofcom to stand up for the universal service, instead of looking to erode it, and to be an advocate for postal services and the positive future available to the industry. We are disappointed that in its work on user needs Ofcom has instead shown a desire to continue down the road of service reduction.

54. The CWU responded in detail to Ofcom's consultation on user needs in December 2012.

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What are your views on Ofcom's proposed work areas for 2013/14?

55. Ofcom identify their participation in the European Regulators Group for Postal Services (ERGP) as a work area affecting the postal sector. Our experience of the ERGP is that it has not succeeded in establishing Europe-wide norms for important regulatory questions, such as allocation of costs of universal service delivery, so we welcome Ofcom's statement that establishing a common position is a focus for the group's ongoing work programme.

56. We were concerned that the ERGP's recent assessment of access competition in Europe failed to properly acknowledge the negative consequences of the way access was

introduced in the UK. It is surprising that Ofcom would chair the working group on end-to-end competition, given that other European regulators have significantly more experience in this field. We believe Ofcom could better use its resources by focusing on the urgent and critical issues around end-to-end in the UK and the protection of the universal service.