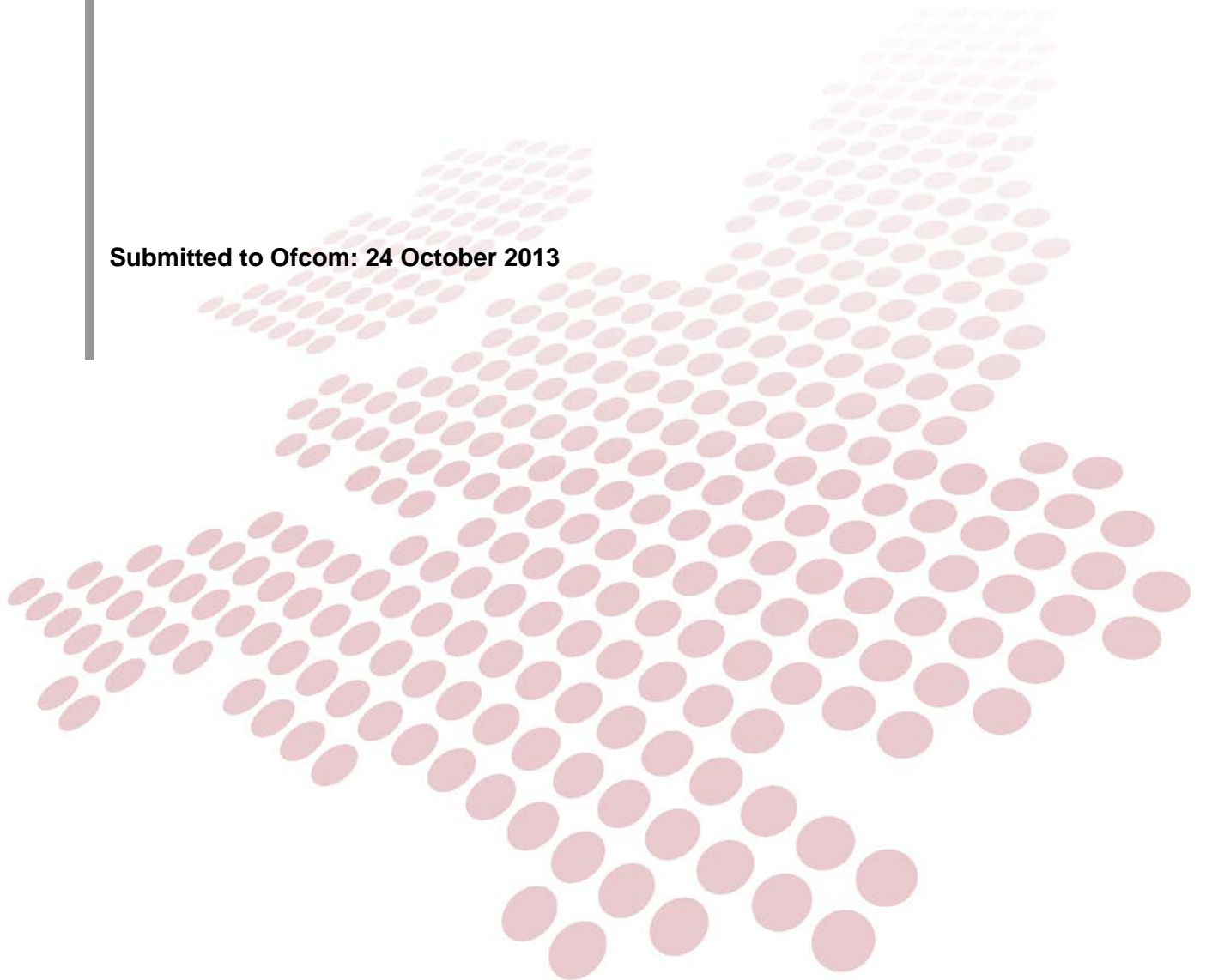


Annual Plan 2014/15

Invitation to Comment

UKCTA Response to Ofcom

Submitted to Ofcom: 24 October 2013



UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.

We welcome the invitation to comment in advance of Ofcom's publication of its draft Annual Plan. In previous years, while we have had the opportunity to comment on the draft Annual Plan, UKCTA feel that this is too late in the process and that the plan is effectively already in its near final version. Providing stakeholders with an earlier opportunity to shape Ofcom's thinking in terms of its future work priorities will ensure that those best placed to identify the issues which Ofcom needs to address can do so.

Below we set out key issues which we believe should be included in Ofcom's Annual Plan.

Strategic Review of the UK Communications Sector

We are at the beginning of another shift of the plates in the telecommunications industry: the transition from copper to fibre. The last major strategic intervention by Ofcom was in 2005 following the Strategic Review when Openreach was created and Ofcom accepted Undertakings from BT in lieu of a reference to the Competition Commission.

Since 2005 BT's product set has evolved and countless exemptions to the requirement for Equivalence have been granted by Ofcom. The effect has been a dilution of the effectiveness of the Undertakings and a re-emergence of competitive problems. As BT undertakes widespread deployment of fibre to the cabinet and starts to roll out fibre to the premises in some areas, UKCTA believes it is time for a review of the Undertakings in the context of the emergence of NGA and the wholesale products needed to support competition in this area. For example, for UKCTA members using the WLR active wholesale product, there is concern that there are no BT plans or regulatory requirements for a follow-on active wholesale voice product for use in areas where fibre extends to the premises (FTTP areas).

We believe this Undertakings review should be part of a significant tactical review of the regulatory approach to the UK communications sector to see if the current regulatory framework is delivering for citizen consumers and UK business, harnessing competition at all levels of the market.

We believe this project shouldn't just be about reviewing the current Undertakings, it should be wider, focusing on how to improve outcomes for all types of consumers who either directly or indirectly rely upon regulated products. It should place a real emphasis on ways to deliver efficient pricing, improved quality of service and enhance competition in new services, examining issues such as:

- I. Ofcom's forecasted charge control outcomes, versus reality. There is considerable evidence to suggest that BT has enjoyed excess profits from past charge control decisions and it is appropriate to examine ways to maintain the incentive effects on BT while ensuring no excessive recovery.
- II. BT Efficiency: Ofcom have failed to eradicate BT's ability to pass through supplementary labour costs in regulated charges. BT labour practices are a matter for BT, but consumers must not be left to fund discretionary practices that add significantly to BT's labour costs.
- III. Regulating for Quality has been a theme in recent market reviews; however Ofcom should consider how to hard wire quality outcomes within markets that are subject to enduring access bottlenecks and regulation.
- IV. Fostering Competition in NGA in all parts of the United Kingdom.

We appreciate that this will be a resource intensive project, spanning a considerable period of time and will require a great deal of planning, however the potential benefits to UK consumers are significant, delivering long term economic benefits to the UK.

Administrative Charges

As Ofcom is aware, UKCTA members are very concerned about the late notification of administrative charges payable in 2013/14 which left CPs trying to accommodate a large increase in their annual charge at a time when their budgets for 2013/14 had been finalised.

We have discussed this issue with Ofcom and would reiterate our desire to have earlier warning of any changes in the level of administrative charges particularly where there may be a significant shift in the charges payable. We believe that inclusion of something in the draft Annual Plan would be helpful.

Investigations

UKCTA members are aware that Ofcom is undertaking a number of own-initiative investigations. We believe that it would be helpful to detail its plans for these in the Annual Plan to provide stakeholders with a full view of the issues on which they may be required to engage. In particular we are concerned about ongoing own-initiative investigations into compliance with General Conditions – what investigations are being undertaken, what is included within those investigations and timescales.

Review of the General Conditions

For some time Ofcom has talked about undertaking a review of the General Conditions. UKCTA members believe that this is becoming a priority area which Ofcom cannot afford to delay further. The General Conditions have developed in a somewhat piecemeal way since they were first put in place in 2003 and have been amended numerous times to incorporate revised European requirements as well as Ofcom's own regulatory initiatives.

As a result they have become increasingly unwieldy and in some cases outdated as technologies and the market have developed. All stakeholders would benefit enormously from a thorough review of the General Conditions with the aim of ensuring they are clear and relevant.

Review of Openreach SLA Regime

UKCTA welcomes Ofcom's proposals for regulatory intervention in respect of Openreach service delivery in the context of the Fixed Access Market Review. However, this will only address service delivery in respect of a small number of Openreach services. Poor service has been experienced by CPs across a much wider set of services and we are concerned to ensure that these issues are not exacerbated by Openreach simply focusing its resource on those areas where it is subject to specific regulatory obligations.

UKCTA considers a comprehensive review of the SLA regime across all regulated products is needed to ensure this does not happen and that Openreach is incentivised to provide CPs with an appropriate and acceptable level of service where CPs have no choice but to rely on Openreach for the delivery of bottleneck services.

Critical BT Services

UKCTA members are concerned about the potential for BT to price excessively where it faces no competition in the provision of a service and there are no ex-ante pricing constraints. We have recently highlighted 3 specific services to Ofcom where we believe BT's pricing requires investigation or there is a risk of BT acting in a manner which is anti-competitive:

- Text Relay - Price increase of ~ 60% was imposed in June and a substantial discount offered in exchange for long term exclusivity and de-facto volume commitments (ex-ante pricing regulation was removed in October 2012; competing providers have yet to enter the market);
- Payphone Access Charge – There have been progressive charge increases over several years (C. 300% increase since 2011) at a time when payphone traffic is decreasing and the overall number of payphones has also declined;
- Emergency Call Handling Service - C&W's withdrawal from the market will leave BT with almost 100% market share. BT will be unconstrained in the provision of the service, including pricing.

We are particularly concerned that in the case of text relay and emergency calls all CPs have regulatory obligations to provide access to the services themselves and have no option but to buy these services from BT. UKCTA members believe it would be appropriate for Ofcom to investigate these issues and, where necessary, take action to constrain anti-competitive behaviour.

- END -