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NON- CONFIDENTIAL VERSION

1 March 2011

Dear Ed,

Three's response to Ofcom's consultation regarding its Draft Annual Plan 2011/12 ("Draft Annual Plan")

Hutchison 3G UK Limited ("Three") welcomes the opportunity to respond to Ofcom's consultation on its Draft Annual Plan 2011/12. We find it a useful process to be given visibility of Ofcom's proposed work programme for the next twelve months. We have, however, found it difficult to establish exactly how Ofcom's 13 priorities and 29 additional major work areas for 2011/12 will be prioritised as against each other. It would be useful to understand this balance in more detail, especially given Ofcom's overarching aim of meeting the public spending challenge by delivering efficiencies, as this will presumably necessitate that greater importance is given to some projects over others.

Three also requests that in the final version of the Annual Plan, Ofcom supplies more detailed information around the specific timing of work programmes and anticipated publication dates of important consultations. This is because industry stakeholders need to plan for 2011/12 in much the same way as Ofcom. For example, responding to consultations and information requests requires a great deal of work and resource from both Three's regulatory department and the wider business.

We understand from the consultation and the Stakeholder Workshop held at Ofcom offices that Ofcom is undergoing a significant reorganisation of teams and a large reduction of headcount with approximately 170 posts becoming redundant. It would therefore be helpful for Ofcom to provide further clarity and transparency if possible around the new team structures and reporting lines, to help us ensure continuity of our contact and relationship with Ofcom in the future.

We discuss below our views on each of the specific priorities identified by Ofcom in the Draft Annual Plan that are most relevant to our business.

1. Spectrum

Three notes that the Draft Annual Plan includes significant work streams around spectrum including:

- preparing for auction of 600 MHz, 800 MHz and 2.6 GHz spectrum bands;
- timely spectrum clearance;
- delivering the government's guarantee for wireless spectrum requirements for the Olympic and Paralympic Games in 2012; and
- developing a medium term spectrum policy work programme in light of market developments.

Three welcomes Ofcom's plans regarding spectrum allocation and spectrum management. As Ofcom acknowledges, the use of new communications services in the UK is growing at a very rapid rate, and many of these are dependent on radio spectrum to operate. For example, the rapid take up of smartphones and mobile broadband in the UK over the last couple of years, has led to a huge growth in data use and this trend is likely to continue. Three expects technology in devices and services to continue to expand at the current rate on a global basis.

Whether UK consumers benefit from these further technological developments will depend upon the effectiveness of competition in the UK market and the availability of spectrum, specifically because data traffic requires significantly greater spectral capacity than voice or SMS. New evolutionary mobile broadband technologies such as LTE and HSPA+, which offer high speed advantages over earlier 3G technologies, are becoming available, and are placing increasing pressure on mobile network operators' (MNOs) spectrum holdings.

In addition, the liberalisation of 900MHz spectrum for 3G use in the hands of the incumbents is likely to distort long-term competition in the mobile market, which was established by the 3G auction in 2000. This needs to be remedied as soon as possible through Ofcom's competition assessment and spectrum auction design.

We also note with interest the prominence that Ofcom has given in the Draft Annual Plan to the work it intends to carry out to ensure that wireless services are adequately delivered during the London 2012 Olympic Games and Paralympic Games. As we have previously noted, while we recognise the national importance of such a project, we believe that Ofcom should act to limit its impact on Ofcom's regulatory agenda. We would be extremely concerned if the Olympics project took precedence over Ofcom's other priorities, which could produce significant consumer and market benefits in both the short and long-term.

2. Switching and Mobile Number Portability ("MNP")

Three welcomes Ofcom's commitment to examine and improve switching between communications providers, and notes that in the past four years the number of consumers who have switched mobile providers has fallen from 13% to 8% and is now only one percent higher than switching rates in the broadband and fixed markets¹. These low switching rates have also been noted by the National Audit Office² and the House of Commons Public Accounts

¹ Figure 4, Ofcom's Draft Annual Plan 2011/12

² <http://www.nao.org.uk/publications/1011/ofcom.aspx>

Committee³, with the Public Accounts Committee noting that: “Switching rates in the communications market are relatively low compared to, for example, the energy and car insurance sectors. Some consumers find it extraordinarily difficult and slow to switch services such as broadband or mobile phone providers.”⁴ Both bodies have strongly encouraged Ofcom to make reform of switching processes a key priority going forward.

Three is very concerned by Ofcom's recent decision to deprioritise mobile in its current consumer switching project. Ofcom will recall that Three first highlighted the need to improve the UK's MNP system by moving to a recipient or gaining led provider system back in 2004 and in 2007 Ofcom issued a statement mandating a move to a near-instant recipient-led system⁵. However, four years on, very little substantive change has been achieved, and we still have a MNP system in the UK which requires consumers to speak to their old network first, before they can move their number. This is a barrier to competition and causes consumer harm.

We are therefore at a loss to understand why, as switching in the mobile sector has fallen since Ofcom abandoned its 2007 plans, Ofcom has decided not to consider a move to a gaining provider led MNP system in 2011/12. The Ofcom CEO, when asked specifically about mobile switching, gave assurances to the Public Accounts Committee that switching would be improved and that a gaining provider led system made “it easier and more convenient for people to switch”. In our view, a move to a gaining led provider system for mobile services ought to be a priority for Ofcom's 2011/12 work programme.

3. Mobile Broadband

We support Ofcom's aim of ensuring that broadband consumers are provided with clear information by communications providers so that they can make informed choices.

In the Draft Annual Plan, Ofcom refers to its workstream to ensure compliance with the newly revised Code of Practice (tested through mystery shopping). However, we note that this Code of Practice is for fixed communications, rather than mobile.

As Ofcom is aware, in 2009 the mobile network operators signed up to a self regulatory code on the promotion and marketing of mobile broadband which commits the operators to provide information to consumers about coverage, speed and pricing. We believe this self regulatory approach has been essential in building consumer confidence in mobile broadband, and will be further strengthened by greater transparency on traffic management during 2011/12.

4. Content regulation

Clear inconsistencies remain in the current approach to the regulation of paid for content on communications networks. Currently, where a TV channel purchased for 24 hours on Three is regulated as Premium Rate (including the regulation of harm and offence) a TV channel

³ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/publications/>

⁴ *Ibid*, paragraph 11

⁵ *Telephone number portability for consumers switching suppliers – Ofcom's Concluding Statement* published 29 November 2007 <http://stakeholders.ofcom.org.uk/binaries/consultations/gc18review/statement/statement.pdf>

purchased for 24 hours on Talk Talk's TV on demand service is not regulated as Premium Rate. These inconsistencies were first drawn to Ofcom's attention in 2005.

We trust that, given Ofcom has identified the consideration of new regulatory approaches to content regulation as a priority area for 2011/12, it will move quickly to apply the analytical framework it developed in 2009 and revise the Premium Rate Condition so as only those PRS content services provided by communications networks that are deemed to present a risk to consumers are regulated.

5. Implementation of Digital Economy Act 2010 ("DEA") online copyright infringement provisions

We would welcome a revised timeline for the delivery of this workstream and clarity over Ofcom's position given the Secretary of State's review of the blocking aspects of the DEA.

Three believes that any infringement provisions should be paid for by those who benefit from them, and success should be measured not only by the relative fall in copyright infringement, but by rights holders' willingness to support flexible new business models.

6. Mobile Termination Rates

Three welcomes Ofcom's plans to publish its decision on mobile termination rates in mid-March 2011.

7. Non-Geographic Numbers

Three welcomes Ofcom's strategic review of the market for non-geographic services. We, however, note that some of the potential remedies proposed in the consultation document are complex and may be costly to implement. Therefore, we encourage Ofcom to undertake a thorough analysis to ensure that the imposed remedy is effective and proportionate to the detriment.

8. Consumer policy

With regard to Ofcom's Guidance on Unfair Terms in Contracts for Communications Services, Three has previously provided a comprehensive response to Ofcom [3<]. Whilst Three notes that Ofcom reissued its Guidance on Unfair Terms in Contracts for Communications Services at the end of 2010, following the Supreme Court's decision in *Office of Fair Trading v. Abbey National PLC (and 7 others)* ([2009] UKSC 6), Three's view in respect of Ofcom's reissued Guidance remains unchanged.

9. Coverage and Not-spots

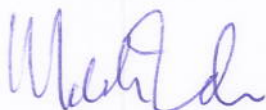
Three will continue to support Ofcom's work on mobile coverage and not spots, and we look forwards to receiving the findings of the Devon trial. Whilst the Draft Annual Plan makes reference to the role spectrum release will play in supporting mobile broadband, there is a disappointing absence in the Draft Annual Plan of any recognition of the impact spectrum release will have on competition and the role competition has played in driving the rollout of mobile broadband to date.

The competition that drove the expansion of mobile broadband was considerably weakened in January when Ofcom permitted the incumbent mobile operator to use their legacy 2G spectrum for 3G services. If the forthcoming spectrum auction fails to redress the competitive imbalance caused by liberalisation of the 900MHz & 1800Mhz licences then there will be a further erosion in competition and this will threaten future expansion and will severely undermine Ofcom's stated objective of expanding mobile coverage.

Three would therefore like to see a clear commitment from Ofcom to ensure competition through the appropriate structuring of the spectrum auction.

All of the above work areas important to Three fit well within Ofcom's proposed future work programme and developing a regulatory framework for their key priorities. Three would be happy to discuss the above issues and further proposals with Ofcom.

Yours sincerely



Mark Falcon
Head of Economic Regulation
Hutchison 3G UK Limited

Cover sheet for response to an Ofcom consultation
BASIC DETAILS

Consultation title: **Draft Annual Plan 2011/12**

To (Ofcom contact): Ed Leighton
Name of respondent: Mark Falcon
Representing (self or organisation/s): Hutchison 3G UK Limited
Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input checked="" type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

The following confidential information has been redacted in this response (indicated by "[X]"):

- 1. Data or other commercial information which is not public and business secrets or other commercially sensitive information.*
- 2. Explanations of Three's intent or future plans which are not in the public domain and which, if disclosed, would provide commercially sensitive information to third parties, including Three's competitors.*

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)