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Comments on Ofcom's supplementary VULA guidance

Dear Dave

This letter forms TalkTalk's response to Ofcom's supplementary guidance on assessment of the VULA margin in light of BT's acquisition of UEFA TV rights, published on 11 June.

TalkTalk welcomes Ofcom publishing this supplementary guidance. We believe that by publishing such supplementary guidance whenever there is a material change of circumstances in BT's product offering, Ofcom will maximise clarity to all stakeholders, reducing perceived regulatory risk and the likelihood of disputes.

Furthermore, TalkTalk supports the particular approach proposed by Ofcom in its supplementary guidance. It is appropriate to allow BT to defer some proportion of the costs of its UEFA rights, reflecting the time that it will take BT to build its base of paying customers. However, Ofcom concluded that such a deferral should only be for a short period of time (five months); this is appropriate given that the rights acquired only last for three years, with no certainty that BT will retain the rights at future auctions, and as such BT will need to rapidly build towards covering the cost of UEFA rights.

It is also appropriate that Ofcom has concluded that deferred costs should be recovered during the Recovery Period, and so BT should recover its total costs of the UEFA football rights over the course of those rights being held. If all costs were not fully recovered over the course of the rights, there would be a risk that BT could use the UEFA rights inappropriately reduce the margins achieved by TalkTalk and BT's other downstream competitors.

At the same time as welcoming Ofcom's current approach, TalkTalk believes that it is imperative that Ofcom continues to review whether the approach to the UEFA rights is appropriate in light of the emerging market outcomes. If it becomes clear that the approach is (unexpectedly) unable to protect competitors from a margin squeeze, then Ofcom should be willing and able to amend the approach as quickly as practicable. Ofcom will need to engage in such a continual review and amendment of the VULA guidance due to the high and increasing complexity of regulating the types of bundles

that BT already offers following its move into sports broadcasting, and particularly the bundles it will offer if its proposed merger with EE goes ahead.

I hope that this letter clearly sets out TalkTalk's position on the supplementary guidance; please do not hesitate to contact us if you would like to discuss further anything in this letter.

Yours sincerely

A handwritten signature in black ink that reads "Simon Pilsbury". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'y'.

Simon Pilsbury
TalkTalk Telecom Group plc