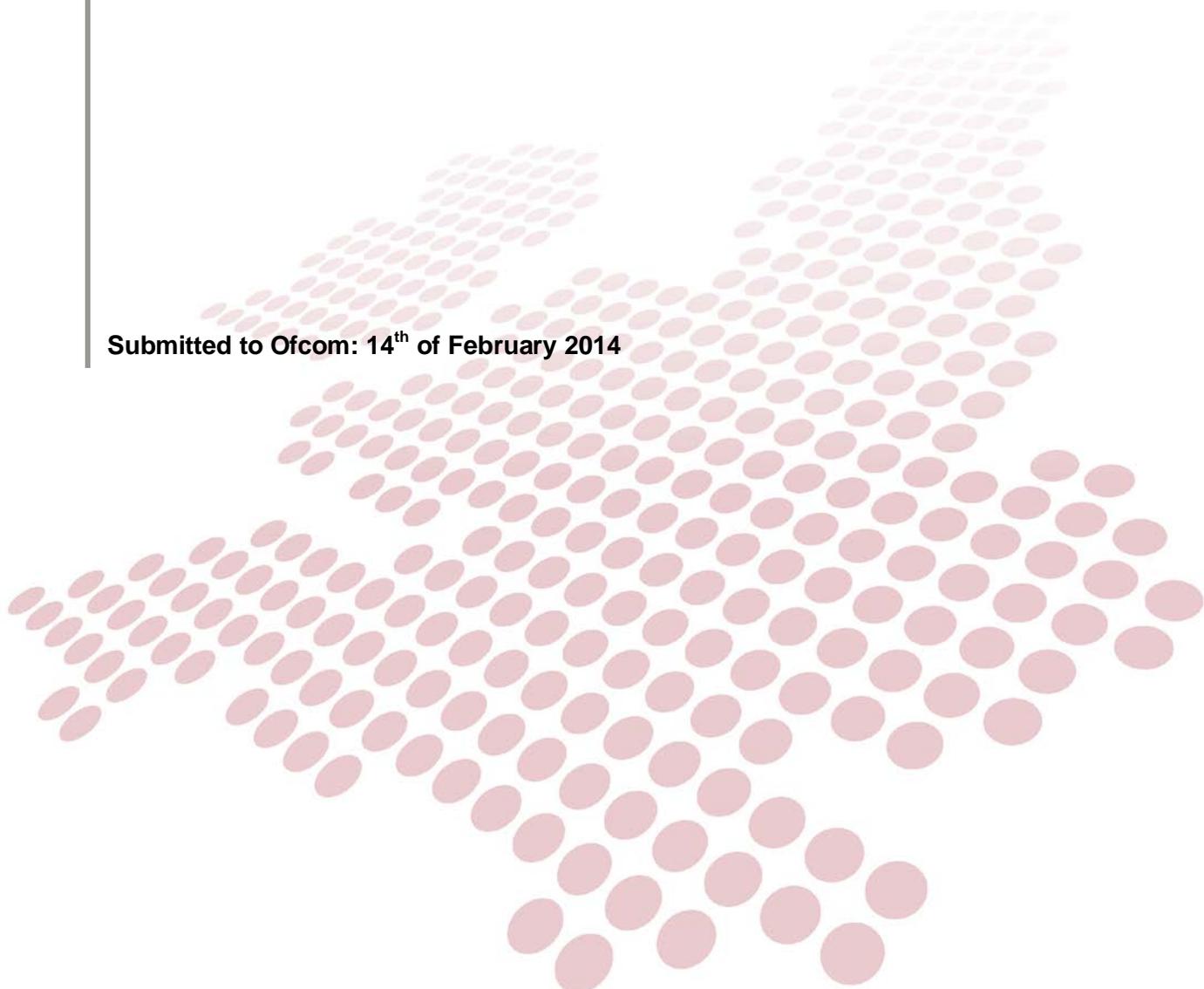


**Draft Annual Plan 2014/2015**

UKCTA Response to Ofcom Consultation

Submitted to Ofcom: 14<sup>th</sup> of February 2014



## **Introduction**

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](http://www.ukcta.com).

We welcome the opportunity to comment on Ofcom's draft Annual Plan. As a general observation, we consider that Ofcom's objectives of furthering the interests of consumers and citizens are best achieved through ensuring healthy and robust competition in the markets that it regulates. On the whole, competitive markets are likely to deliver positive consumer outcomes more effectively than regulatory intervention. Ofcom should therefore prioritise measures which enhance competition and eradicate barriers to entry. In this context, we set out below some key issues which we consider Ofcom should seek to include in its final Annual Plan 2014/15.

The comments we make below echo the comments made in the UKCTA response to the Invitation to Comment published by Ofcom in September 2013. While we are supportive of the concept of an Invitation to Comment we are disappointed that Ofcom has chosen to simply summarise the comments received in response to that consultation. We strongly believe that in the interests of an open and effective consultation process Ofcom should at the very least provide a response to the issues which are of significance to stakeholders.

## **Strategic Review of the UK Communications Sector**

UKCTA notes and welcomes Ofcom's commitment to completing the fixed access market review (including the regulation of Openreach service quality) and beginning work on the business connectivity market review during 2014/15. However, we consider that these piecemeal steps are likely to prove too narrow, and will ultimately be deficient in the face of significant market developments which are eroding competition in the communications sector. Without a more substantial, holistic examination of the market, the effectiveness of BT's Undertakings will continue to be diluted, leading to a consolidation of market power and the re-emergence of widespread competition issues. Put simply, UKCTA considers that now is the time for Ofcom to undertake a second Strategic Review of Telecommunications.

As UKCTA highlighted in its response to the Annual Plan Invitation to Comment, we are now in the throes of a significant shift in the telecommunications sector: the transition from copper to fibre. As BT completes its widespread deployment of fibre to the cabinet and starts to roll out fibre to the premises in some areas, a strategic review of the market in the context of the emergence of NGA (and new wholesale products) is needed to support competition in this area. Such a review should incorporate overarching examinations of the Undertakings, consumer regulation, pricing regulation, quality of service and the structure

of the market itself, including the needs of UK business customers. Specific issues might include:

- I. The discrepancy between Ofcom’s forecasted charge control outcomes and 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: though this has been a theme in recent market reviews, Ofcom should give a ‘first principles’ consideration 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. Limited engagement by Openreach means that innovative alternatives to the standard GEA product are being stifled. This engenders a lack of price, product and service differentiation, with the risk that the communications market ends up without effective competition. One specific concern for UKCTA members using the WLR active wholesale product is 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).

Although the resource implications of such a project would be significant, failure to undertake a strategic review now would likely lead to greater expenditure in the future. If the easing of competitive pressures on BT continues unchecked, it is reasonable to anticipate an increased number of disputes, complaints and investigations in the medium-term as competitor companies face an incumbent with increasing market power.

In summary, the potential benefits to UK consumers of a strategic review of the UK communications sector are significant, with enhanced competition likely to deliver long term economic benefits to the UK. Ofcom should as a matter of urgency look to prioritise such a review within the next 12 months.

### **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, as highlighted in UKCTA’s response to the call for inputs, 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. As with the proposed strategic review of the UK communications market, there is a distinct possibility that without any review discussions between other communications providers and Openreach will end in statutory disputes, further tying up Ofcom resources and resulting in a period of sub-optimal consumer outcomes.

### **Critical BT Services**

UKCTA members remain concerned about the potential for BT to price excessively where it faces no competition in the provision of a service and where there are no ex-ante pricing constraints. In our response to the Invitation to Comment, we have highlighted three specific services 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 services, payphone access charges and emergency call handling services.

In some cases, CPs have regulatory obligations to provide access to these services themselves but have no option to buy from anyone other than BT. Ofcom does not address any of these issues in its draft Annual Plan, despite the fact that they are instances of enduring market power. UKCTA members believe it would be appropriate for Ofcom to investigate these issues and, where necessary, take action to constrain anti-competitive behaviour – or, failing that, to explain why it believes that such services constitute effective working markets and thus do not require action.

### **Review of the General Conditions**

For some time Ofcom has talked about undertaking a review of the General Conditions. UKCTA (and others, judging from the representations submitted to Ofcom's call for input) continue believe that this is becoming a priority area which Ofcom cannot afford to delay further. All stakeholders would benefit enormously from a thorough review of the General Conditions with the aim of ensuring they are clear and relevant.

**End.**