INTRODUCTION

We welcome this opportunity to comment on Ofcom’s Draft Annual Plan 2012/13. It is important for stakeholders to have visibility of Ofcom’s priorities for the year and an opportunity to influence those priorities. As a business focused communication provider with many of the United Kingdom’s leading private and public organisations as customers we champion the needs of UK enterprises, which depend on us to deliver the communication services they need to do business. Our customers have to stay ahead in a tough economic climate where competition is international and almost every communications innovation opens up threats as well as opportunities.

UK business needs the right kind of support in order to prosper. Communication technology is a key economic enabler, helping to open up new markets and allowing companies to organise themselves efficiently to meet the challenges before them. It is important that the needs of businesses are well served by the communications industry and the best way to do that is through competitive and effectively functioning markets, where access bottlenecks are countered by appropriate regulatory remedies and disputes and complaints are dealt with swiftly and fairly to ensure incumbent providers aren’t able to leverage their entrenched assets to make excessive returns and stifle innovation and choice.

While Ofcom’s is rightly focused on the consumer, it would wrong to overlook the interests of UK business as it is only by having sustainable competition in the supply of communications services that the long term consumer interest is served. Ofcom should be mindful of the challenges currently facing UK businesses and should put effort into considering the needs of business when key decisions are made.

In the remaining section we set out what we believe Ofcom needs to do in order to play its part in helping communications industry better serve the needs of UK business in the year ahead:

1. PROMOTING SUSTAINABLE COMPETITION

This year will see Ofcom undertake one of its most important market reviews, the business connectivity market review. This review does not just concern communications for businesses; it addresses many of the fundamental building blocks that underpin competition in most communications markets. In particular:

- The connectivity between telecoms exchanges that supports consumer broadband and voice as well as a wide array of services for business;
- The connectivity that underpins public and private mobile networks, and forms a major part of the upgrade to high bandwidth mobile data services;
- Services for business, such as leased lines and virtual private networks, as well as the underlying connectivity to support internet access and voice services

The review is one of the big opportunities Ofcom has to ensure that regulation is properly targeted to promote viable and sustainable competition. The industry is currently undergoing a shift from TDM networks to those based upon Ethernet and next generation access technologies and this
change creates both opportunities and threats for competition. We hope Ofcom will address the following important areas during the course of this review:

- Establish the point in the network at which regulation should be targeted to best ensure that competition can be sustainable. Advances in technology no longer mean it is necessary for competitors to build to all 5500 BT exchanges. At present BT requires connectivity via too many exchanges which overcomplicates its competitors’ businesses;
- Ensure that BT makes available the right migration products, both technically and commercially, that facilitate and encourage moves from old world products to new world products in the most efficient manner;
- Protect users of old world products from unjustified price rises and the threat of service degradation during what will inevitably be a long and difficult migration;
- Extend the regulatory protection to services of all bandwidths as it is the lack of availability of alternative fibre providers in specific locations that is the major economic bottleneck and this is independent of service bandwidth; and
- Pay particular attention to prices and services where BT is able to load costs in a way that disproportionately impacts their competitors business compared with their own.

The business connectivity market review cannot be undertaken in isolation from next generation access which will serve both business and residential consumers. We support Ofcom’s approach to drive competition through ensuring Equivalence of Inputs but Ofcom must remain alive to the fact that equivalence on its own is not enough to ensure BT does not use its dominance to the advantage of its own business. BT must not be allowed to select the handover points for NGA in a way that involves investment to different locations to those required for fibre based ethernet services.

2. NON-GEOGRAPHIC CALLS

08XX numbers provide UK business with the means to do business. They remain a vital part of our communication landscape and we are encouraged that Ofcom is working to secure their long term future.

We think it important that the called party has the ability to control the price of call which can be used to help fund the services provided and also that consumers can make informed decisions with improved transparency of retail tariffing. In its reform of the non-geographic numbering regime Ofcom should strive to reward infrastructure investment and work towards an outcome that preserves the current level of interconnect payments in order to minimise the impact of any changes on UK business and consumers. Doing anything that jeopardises the ability of UK business to make use of non-geographic numbers would be hugely damaging for the UK economy. A solution that provides the transparency for consumers and the stability for UK business is an achievable outcome and we hope that by the end of FY 2012/13 Ofcom will have all the necessary legal tools in place, having addressed the key issues to enable an orderly transition to a sustainable alternative model for Non-Geographic call services.
3. **SMART METERING**

While essential to meeting the Government’s green agenda commitments, the rollout of smartmeters (and subsequently smartgrids) is something which, of course, comes under the remit of the Department of Energy and Climate Change (DECC). However, actions by Ofcom can be a key facilitator in allowing the energy industry to roll out smartmeters in a cost-effective manner. We are disappointed that this appears to have been overlooked in the annual plan. For example, the usage of spread spectrum techniques in the 870-870MHz band could become an enabler to rolling out communications to smartmeters swiftly and cheaply. This spectrum is currently partially in Ofcom’s hands, partially in the Ministry of Defence’s. While acknowledging the need for international standardisation and co-ordination, we would respectfully suggest that at the least Ofcom should be making efforts to be ready for when this occurs, and ideally providing access in advance of finalisation of international activity on a trial / “at risk” basis.

4. **REGULATORY ACCOUNTING & COST ORIENTATION**

We welcome Ofcom’s commitment to reviewing BT’s regulatory accounting output and obligations as well as updating guidance on Cost Orientation. Regulatory Accounting output informs much of the work Ofcom undertakes and unless sufficiently detailed, reliable & unbiased output is available, regulating areas of significant market power effectively will be difficult to achieve.

With developing markets and technology it is the right time to review the cost orientation remedy, to ensure it is working as it should. Cost Orientation is a vital remedy to counter significant market power and there should be no ambiguity around how the principle is applied. Ofcom should strive to achieve competitive market outcomes where ever possible and leave no room for excessive profits where market failure occurs. We therefore welcome Ofcom’s intention to publish refreshed guidance on the meaning of Cost Orientation.

Reform of the regulatory account regime as it applies to BT is vital. In the recent past BT has been able to restate it regulatory accounting output and change key input assumptions with the sole motive of furthering its own commercial ends. A system which permits so much bias is not fit for purpose as it requires both Ofcom and other stakeholders to make adjustments before the accounts can be used to inform regulatory decisions. Regulatory Accounting is a cornerstone of the UK regulatory regime and we look forward to Ofcom delivering a new regime in FY 2012/13 that allows no room for bias, delivering reliable output and restoring the trust of stakeholders.

5. **AWARD OF 4TH GENERATION MOBILE SPECTRUM**

Ofcom plans to hold the auction of a substantial amount of spectrum in the 800 MHz and 2.6 GHz bands later this year. This is a very important event for the whole of the communications sector, not just the mobile market. For us success in this project will mean that:
• There is strengthening of competition among the mobile network operators leading to a better wholesale market in the provision of mobile services, particularly mobile data services;
• The award is completed before the end of the year and the availability of the spectrum itself is on track for 2013;

6. KEEPING OBLIGATIONS PROPORTIONATE

We understand and our enterprise customers understand the need to ensure that consumers have the confidence and transparency they need to make informed choices over the use of communication services. For example in the case of non-geographic calls consumers need to know that when they make a call what it will cost and that the cost is fair and reasonable. Ofcom however should be mindful not to place undue burdens on communication providers or the businesses they serve. Consumers should have the information available to them to make informed choices and where there are instances of consumer harm they should be remedied. New obligations which impose additional burdens on providers or their customers should be avoided wherever possible, unless a genuine and deserving need is identified. In the current economic climate Ofcom should be mindful of placing additional burdens on providers and any new obligations should be proportionate. Where a social need is identified then the funding of that need should be examined in a wider context, considering funding sources outside of the industry including direct funding from Government.

7. IMPROVING DISPUTE AND COMPLAINT HANDLING

A key part of Ofcom’s duties is to investigate and resolve disputes and complaints as swiftly and fairly as possible. Where disputes arise uncertainty follows, and it is often the case that there is little commercial incentive for an incumbent provider to cede to a request unless a dispute or complaint is brought. Swift and decisive dispute resolution is vital if consumers are to benefit from competition. Complaints by their nature are often more complex and while there is need to be thorough, the current timescales for resolution are unacceptably long and play into the hands of the party whose conduct is being questioned. We note the recent strides Ofcom has taken to improve its performance in dispute and complaint handling, particularly in the area of dispute resolution; however we believe more can be done to improve the process for all stakeholders.

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