



BT's response to Ofcom's consultation document

"Annual Plan 2015/16: Invitation to comment"

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Comments on this response should be sent to:
Alex Quinn, BT Group Regulatory Affairs, via email at alex.quinn@bt.com

Introduction

The Ofcom Annual Plan ('the Plan') is an important document for stakeholders, both in terms of understanding Ofcom's strategic direction and priorities for the year ahead and for planning the efficient use of resources to deal with the activities scheduled throughout the year.

We welcome the opportunity to submit comments in advance of the publication of the draft Plan. Responses will help Ofcom to focus on issues that stakeholders have identified as important when it drafts the Plan for 2015/16.

Our comments are set out in this response, grouped by the three topics on which Ofcom asks stakeholders to provide their early views, i.e.:

1. Potential changes to Ofcom's overall strategic approaches and purposes;
2. Issues that should form Ofcom's priorities or major work areas; and
3. Specific areas for deregulation or simplification.

1. Potential changes to Ofcom's overall strategic approaches and purposes

Ofcom's overall strategic approaches and purposes, set out in this call for inputs are as follows:

- Promote effective competition and informed choice;
- Secure optimal use of spectrum;
- Promote opportunities to participate;
- Protect consumers from harm;
- Maintain audience confidence in broadcast content; and
- Contribute to and implement public policy defined by Parliament.

BT broadly agrees with these purposes. However, Ofcom should also base its approach on the following additional purposes which support the promotion of effective competition and informed choice:

- Ensure the regulatory framework incentivises investment by providing investors with reasonable regulatory certainty and allowing them the opportunity to make reasonable returns;
- Ensure a level playing field across industries to create effective competition in all areas;
- Promote best practice internationally in order to ensure effective cross border competition.

2. Issues that should inform Ofcom's priorities or major work areas

Below we list various areas that we believe Ofcom should focus its work on in 2015/16 in order to ensure that competition best serves customers across the communications industries. These include many work areas where Ofcom will already have carried out some work or which are already included in Ofcom's plans: our intention in commenting on such areas is to suggest how Ofcom might approach these work areas in a way that helps to ensure they achieve their strategic purposes.

We also outline additional topics that we believe Ofcom needs to address to ensure it fulfils its role in achieving positive customer outcomes and to ensure that regulation is up to date and fit for purpose.

2.1 Pay TV

There continue to be significant problems in competition in pay TV, notably related to Sky's market position and the consequential impact on the development of fair and effective competition in pay TV. Given the enduring and significant nature of these problems, Ofcom continues to perform a vital role in seeking to address them, most notably through its forthcoming review of Sky's 'Wholesale Must Offer' obligations, which can be expected to continue on into 2015/16.

We therefore believe Ofcom should make addressing competition problems in pay TV one of the main focuses of its Plan for 2015/16. This would suggest this area should be included as one of the items under the heading 'Promote effective competition and informed choice' in the Figure 2 diagram in the final version of the Plan.

2.2 Bundles

Communications services are increasingly purchased by consumers in bundles of two or three services offered by a single provider. According to Ofcom, at the start of 2014, around 63% of UK households took some form of bundle, and 23% of households took a "triple play" bundle of fixed voice, broadband and pay TV.

Given this ubiquity of bundles, it is essential that consumers are given the same level of contractual protection (in relation to mid-term price increases, for example) across all services in the bundle, including the pay TV element. Otherwise there is a risk of consumer harm, and competitive distortion, as a result of providers increasing the price of the (unregulated) pay TV element, and not allowing customers to leave without penalty, as they would be required to do for a price rise on the fixed voice or broadband elements.

Ofcom has already taken a step in the right direction on this, in its guidance under General Condition 9.6, but stricter enforcement is needed, and/or an exploration of alternative enforcement routes, especially in the light of the difficulties the proposed European regulation in this area is having.

2.3 Consumer Switching

Similar arguments can be made with respect to the switching process used when a customer changes provider for dual and triple play bundles. BT welcomed Ofcom's recent Call for Inputs which asked whether the rules for switching of fixed voice and broadband services within the Openreach network should be extended to switching to and from Virgin media's cable network, between triple play bundles and between mobile CPs. BT's response urges Ofcom to do so, because the current situation (with different processes for switching the same service, and different processes for switching services within a bundle) creates consumer confusion and the potential for harm and competitive distortion.

In the coming year, we urge Ofcom to make significant progress on extending the consumer switching process to cable, pay TV bundles and mobile to ensure a level competitive playing field.

2.4 Audio Description Quotas

BT is very supportive of audio description quotas in television in order to promote access to these services; however we believe Ofcom should consider the appropriateness of imposing such quotas on channels that specialise in sport due to the nature of their shows: these which have very tight turnarounds and short shelf-lives, making audio description very difficult.

2.5 Nuisance calls

We applaud and support Ofcom's efforts on nuisance calls. We believe Ofcom should build on its work by taking further action to trace the sources of nuisance calls, including via more robust cross-border processes and working. We would urge Ofcom to take full advantage of the industry-agreed tracing process and use the maximum traces available to them. Using a higher volume of traces and will help Ofcom to identify and tackle companies that deliberately flout the rules.

2.6 Non-Geographic Call Services (NGCS)

We support Ofcom's plans on NGCS, however we are concerned that there remain a number of complex issues to be resolved and agreed, and that there is a potential for overall implementation to be delayed or derailed. We urge Ofcom to ensure that implementation of the programme proceeds according to its timeline and to take firm and proactive action where this is necessary.

Should any issues arise in specific markets governed by NGCS that cannot be resolved in sufficient time to meet the summer 2015 deadline, we believe Ofcom should seek to retain the timeline for those number ranges that can progress to implementation, whilst allowing the current regime to continue until those remaining areas can be brought into line.

2.7 Spectrum and Mobile

BT supports the continuation of the main priority activities around securing optimal use of spectrum that are in the current year's plan, notably the preparations for the auction of the 2.3 / 3.4GHz spectrum and the work to develop and progress Ofcom's strategy for the TV Broadcasting spectrum, including enabling access to TV white spaces. However, as per other submissions by BT, we believe that some of these activities have genuine complexity and getting the answer right is more important than speed. While work should begin in 2015/16, it is important that Ofcom take the time required to ensure the right outcomes rather than setting an early deadline and rushing to conclusion to meet it.

We would also highlight the need to influence international issues, especially in relation to the ITU World Radiocommunication Conference 2015 and work in CEPT and the EC. This activity should take account of the requirements of UK companies and consumers, and pursued in a transparent manner that enables UK industry to support and input to UK objectives for the international work.

Ofcom's Spectrum Management Strategy, as set out in its Statement of April 2014, includes some specific actions that we suggest should be included in Ofcom's forward work plan for 2015/16. That Statement included some specific actions, including:

- Exploring new forms of spectrum sharing and extending sharing across new bands
- Maintaining our increased focus on understanding the coexistence challenges associated with changes in spectrum use

In the context of Ofcom's action item on "exploring new forms of spectrum sharing" we see this as relevant to the design of future auctions and development of 5G. The activity on new forms of spectrum sharing should look beyond traditional methods of spectrum sharing and should include shared use of spectrum by virtue of mobile infrastructure sharing, with associated wholesale access considerations to promote competition and innovation.

BT continues to believe that the time is right for Ofcom to undertake a review of the mobile sector more generally. Increasing fixed mobile convergence, increasing development of complementary forms of radio access (for example, Voice over WiFi) and ongoing network consolidation are all factors which Ofcom could take into account in such a review. We further suggest that a specific work item is included on considering the impact of 5G and industry economics on competition policy. Maintaining vigorous competition in the face of market and technological changes, including through the MVNO sector, also points to assessing whether wholesale markets are working appropriately.

2.8 EU and International policy

We believe Ofcom should ensure that its pro-competition agenda is pursued not just at home but abroad as well.

We appreciate Ofcom's involvement with the European institutions and in particular the work it has done to support the European Commission's objective of promoting the development of the European Single Market. However, significant differences remain in the way the common regulatory framework is implemented across different member states. In view of this, we encourage Ofcom to continue to work with BEREC to promote best practice across the EU.

In particular, given that the current draft of the Telecoms Single Market Regulation no longer includes the earlier section on the harmonisation of wholesale access services (which we considered critically important), we would urge Ofcom to continue to work with BEREC and engage with the European institutions to inform and influence the coming decisions in this area, especially during the 2020 framework review.

BT would also urge Ofcom to use its influence to ensure that any legislation proposed by the European Commission on Net Neutrality as part of the Telecoms Single Market initiative is fit for purpose, ensuring that it is sensible, fair and that limited in its scope to areas where it is necessary to protect consumers' interests. BT further urges Ofcom to engage on the forthcoming work the European Commission is undertaking in relation to "Over The Top" (OTT) services, working to ensure a level competitive playing field. The regulatory framework needs to address economic bottlenecks across all converging sectors, including those arising on non-telecoms platforms.

Outside of the EU, UK telecoms companies are still at a significant disadvantage when competing in other national markets due to the asymmetry in regulatory regimes. This is particularly evident when comparing the UK and US wholesale access markets: UK companies cannot obtain equal, non-discriminatory access in the US market, unlike their US counterparts in the UK. This means UK companies are extremely disadvantaged when competing for the business of large global enterprises.

2.9 Future voice

In the forthcoming Wholesale Narrowband Market Review, we believe Ofcom needs to bear in mind the IP based solutions now available to CP, and the attractiveness of those options in the light of the benefits of all-IP communications for customers and the increasing maintenance costs of the traditional PSTN.

We consider the time is now right for Ofcom to initiate an industry-wide debate about how the UK will move away from the PSTN and how to ensure that the eventual retirement of traditional TDM-based voice can be achieved in a managed and coordinated way. Although it may not be clear when PSTN networks will become uneconomic to maintain, it is important that the transition to all-IP approaches is signalled to all market participants in a timely fashion, to avoid undue disruption and allow for migration at an appropriate time.

Ofcom needs to ensure that the regulatory approach enables, and does not block, the emergence of such new services and developing convergence. BT urges Ofcom to be flexible in its approach to the

regulation of these new services to allow market-led product specifications to be developed and trialled in an appropriate timeframe.

2.10 Review of the Universal Service Obligation (USO)

Given that the European Commission is due to consult on the scope of the Universal Service Directive, Ofcom should devote sufficient resource to ensure that the needs of UK stakeholders are appropriately represented in those consultations.

We believe that in advance of the consultation, Ofcom should review the current arrangements in the UK to assess whether they are still fit for purpose: public payphones provision is an obvious candidate for review.

If any new USO requirements are considered, they must be assessed very carefully and only adopted following a full cost-benefit analysis and clarity over how they would be funded.

3. Specific areas for deregulation or simplification

3.1 Reducing the level of litigation

BT believes a new public consultation on dispute resolution could be very useful to help stakeholders understand how Ofcom intends to address disputes following its recent practice in this field. In particular, BT would welcome further guidance helping us understand:

- how Ofcom intends to exercise its dispute resolution powers further to the Supreme Court judgment in the 08X disputes, in particular with regards to the levels of evidence required, the burden of proof, the timescales and its role where no SMP obligations or access conditions apply;
- how Ofcom intends to build upon its experience and revise its current practice, for instance where it has discretion on whether or not to accept disputes, or to assess where it should allow complex disputes to be suspended on the basis of “exceptional circumstances”.

All these questions need to be discussed publicly and a line of direction needs to be taken to give stakeholders a clear framework to work with.

3.2 Statutory Information Requests

BT recognises the importance of accurate and full responses from CPs to Ofcom’s Statutory Information Requests, however the quantity and complexity of requests has grown significantly. We would encourage Ofcom to review its current guidelines on how it uses its information gathering powers, which are now several years old, to ensure they are still fit for purpose.

3.3 Regulation of services for business customers

Ofcom should review whether current regulation is appropriately serving the needs of business customers or whether such regulation in certain areas could be relaxed in recognition of the degree of competition and/or its unnecessary complexity/cost. The complexities associated with implementation of obligations or constraints applicable to small businesses, as defined in the General Conditions (undertakings with ten employees or less), are particularly difficult to resolve, since it is impossible for a CP to know, with any certainty and for any length of time, the number of employees that a customer has.

3.4 Regulation of legacy services

As a result of technological and other developments, electronic communications services may enter long-term decline. In our view, simplified, light-handed regulation may be appropriate for such service: for example, an approach based on simple price indexing could be sufficient rather than one based on complex charge control modelling. Volumes in legacy services may be low, and in these cases, a full set of SMP remedies is likely to be disproportionate. In any event, Ofcom needs to ensure that regulation does not artificially prolong the life of obsolete services and discourage customers from migrating to modern, more efficient alternatives.