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18 October 2014

Dear Will,

**EE's response to Ofcom's Annual Plan 2015/16: Invitation to Comment - Confidential**

I write to you in relation to the invitation to comment on Ofcom's Annual Plan 2015/16 (the "ITC"). We would like to thank Ofcom for inviting us to comment on its proposed plans. It is in both the interests of Ofcom and communications providers for Ofcom's priorities and objectives for the coming year to be informed by a dialogue with industry about the issues they consider to be of key concern.

We set out our response to the questions separately in the annex below. However the main points that we wish to make are as follows:

- **Ofcom's strategic approach should take account of the wider context.** Ofcom should assess the cumulative impact of regulation on competition, investment and the sectors it regulates as a whole, when considering any individual piece of regulation. In particular Ofcom must undertake proper impact assessments within the wider context that recognises the way in which different regulatory measures have the potential to interact with each other.
- **We support Ofcom publishing broadband speed data but only where it is relevant and accurate.** If Ofcom decide there is a need to provide broadband speed information to consumers over and above the existing published information, they should engage with an independent 3rd party that is experienced in testing broadband speeds to ensure the information is accurate.
- **The enduring importance of Ofcom's bias against intervention.** Whilst Ofcom should ensure that there are backstop safeguards to protect consumers from harm, one of Ofcom's key regulatory principles is to 'operate with a bias against intervention' and only 'intervene where there is a specific statutory duty to work towards



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a public policy goal which markets alone cannot achieve'. Ofcom should continue to follow these regulatory principles. The current references in the ITC to proportionate intervention by Ofcom are crucial in this regard, but in our view do not go far enough.

- **The importance of ensuring investment in mobile broadband.** In figure 2 of the ITC, Ofcom state that one of its priorities is to “ensure effective competition and investment in both current and superfast broadband”. EE considers that Ofcom’s priorities should also extend to recognising the importance of ensuring investment in mobile broadband, particularly in the context of Mobile Call Termination (MCT) regulation.
- **Clarity on scope of and planned Universal Service Obligations (USOs):** Ofcom states in the ITC that its work will include “ensuring effective and efficient delivery of universal services”. EE requests that Ofcom provides clarity on any proposed USO’s being planned or considered in 2015/16.
- **Greater transparency around the resources Ofcom plans to allocate to projects and the subsequent benefits that have been delivered.** Ofcom already publishes its overall budget in its Annual Plan, but we consider that Ofcom should provide more granularity. This would provide greater accountability for Ofcom and help stakeholders better understand Ofcom’s key priorities.
- **Ofcom’s key regulatory areas** of focus in the mobile sector should be on:
  - Ensuring that in setting Annual Licence Fees (ALFs) for 900MHz and 1800MHz Ofcom takes an approach that is consistent with the Government Direction and takes account of the asymmetry of risk associated with setting ALFs too high.
  - Considering how regulated access to Openreach’s physical network (e.g. dark fibre) could be introduced to promote longer term competition and innovation in the provision of mobile backhaul products. The roll out of 4G networks requires the associated backhaul capacity, which Ofcom should take into account in relation to the work in the current Business Connectivity Market Review (BCMR).
  - Developing proposals for reforms to the Electronic Communications Code (ECC). The Government is calling for further improvements in mobile network coverage and capacity. A significant number of new mobile sites are needed to achieve this. Regulated reduction of site rental costs, which account for almost half of total site costs, represents the



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greatest opportunity to make necessary new mobile network capacity economic.

We would welcome the opportunity to meet with Ofcom to discuss its Annual Plan for 2015/16 in more detail.

Yours Sincerely,



Matthew McDermott  
Regulatory Economist



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## Annex: EE's response to Ofcom's questions

### Question 1. Are there areas of Ofcom's overall strategic approaches and purposes (outlined in paragraphs 2.4 to 2.10 above) that may need to change?

As discussed above, EE believes that Ofcom's strategic approach should take account of the wider context when considering any individual piece of regulation. EE considers that each piece of proposed regulation is increasingly being considered in isolation without taking a more considered view of how various regulatory measures interact. The combined impact of these measures is starting to restrict the ability of communications providers to recover efficiently incurred costs (including the weighted average cost of capital) in a competitive market. Ofcom should undertake proper impact assessments within the wider context that recognises the way in which different regulatory measures have the potential to interact with each other.

### Question 2. What are the issues and areas that should form Ofcom's priorities or major work areas in 2015/16?

The key issues in the mobile sector which we believe Ofcom should prioritise are outlined above.

### Question 3. Are there any specific areas for deregulation or simplification in the coming year?

We appreciate that Ofcom has an obligation to continually assess appropriate areas for deregulation. However as a matter of general principle, EE considers that Ofcom should both impose and remove regulatory obligations with a high degree of caution.

That said, EE has consistently said to Ofcom for a number of years now that we believe that the General Conditions of Entitlement are a key area of regulation which would benefit from both simplification and the removal of unnecessary regulatory obligations.



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