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UKCTA RESPONSE TO OFCOM ANNUAL PLAN 2019-20

INTRODUCTION

1. UKCTA is a trade association promoting the interests of 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.org.uk
2. UKCTA is grateful for the opportunity to comment on Ofcom's proposed Annual Plan.
3. UKCTA supports Ofcom's long-term strategic goals of:
 - a. Promoting competition and ensuring that markets work effectively for consumers;
 - b. Securing standards and improving quality for consumers; and
 - c. protecting consumers from harm.

BUSINESS SECTOR

4. We believe that it is vital that Ofcom recognises that the business market and the consumer market often have very different characteristics and that Ofcom must do more to address the needs of both business customers and providers in the business market. We feel this sector has been neglected in the past and requires an owner or champion within Ofcom to ensure that the needs of the business communications sector are addressed across Ofcom's remit.
5. For example, it is important for the reach and quality of fibre broadband to continue to improve. We strongly support Ofcom's focus and drive on delivering this so that our members can offer their customers a reliable broadband connection that meets their needs at a competitive price. This is particularly critical to business providers and business customers who have poor coverage, ultimately affecting their productivity. The figures which Ofcom cites for broadband coverage in its Connected Nations report are applicable only to the residential market and we would make the point again to Ofcom that the availability figures for business services are materially worse than those which are regularly quoted. In some case they are less than half of the levels which are seen in the consumer market. The "95%" coverage figure is misleading, and it is important that Ofcom recognises the lack of transparency of business premise coverage. We urge Ofcom to take concrete steps to report accurately on superfast broadband coverage for all premises for example, by obtaining better information (in the Connected Nations work) on this problem to help inform their future work and indeed the wider policy debate across Government.

6. We do note that, once again, there are examples of confusion around the definition of “consumer” which, on occasion, is used interchangeably with “customer”. This is a trend seen in many Ofcom documents. As a result, it is not always clear whether businesses are included or not. For example, in relation to the proposed consumer protection work “Future of Consumer Data”, we understand that this is a project looking at allowing greater use of information to consumers on availability, speed and own data usage. We do not believe that this is appropriate for application to the business market and therefore B2B providers ought to be expressly taken out of scope for this proposal. We believe that the wording must focus on “consumers” and not “customers”. Similarly, while we support the introduction of End of Contract Notifications and Annual Best Tariff information for domestic consumers, we do not accept that this is at all appropriate for business customers other than small businesses.
7. Other than these small businesses, business customers simply do not need this protection. Where non-residential products and services are concerned, the contract renewals process is complex and is an opportunity for negotiation on both sides so there is already a strong incentive to discuss this type of information. Typically, business customers are large, well-resourced, and have dedicated teams focused on contract negotiation. They do not need protection as they already have very strong bargaining power and are strongly incentivised to use that for their benefit. Ofcom has recognised the differences in types of customer in its own consultations and we believe that Ofcom should apply this approach consistently and refrain from extending consumer market remedies to the business to business sector. Many of the proposed requirements would be extremely complex and burdensome for CPs to implement.
8. When Ofcom is considering new or amended consumer protection regulation, it must consider what harm it is trying to address and target its regulation accordingly. In order to do this, Ofcom must have a good understanding of the different sectors and customer types, from domestic consumers to large multi-national corporates. A business sector champion within Ofcom would certainly help with this understanding, which would lead to more accurate and informed impact assessments, and ultimately regulation.

CONSUMER PROTECTION

9. UKCTA members welcome Ofcom’s statement that in terms of protecting vulnerable consumers it will review areas of best practice so that communication providers can learn from each other to best meet the needs of consumers. We would welcome an industry meeting with Ofcom to discuss this further. In addition, we welcome the focus on the increasingly important area of protecting consumers online. Many of our members have long been active in this area, for example through initiatives such as the Internet Watch Foundation to address this. We believe it is important that industry as a whole does what it can to protect consumers from harmful online content.
10. We look to continuing to work with Ofcom over the coming year and welcome continued engagement with Ofcom on critical issues to ensure that consumers are protected, and competition is promoted. We are keen to continue discussions to encourage consumer engagement and will work with Ofcom as they review differential pricing practices. We believe that

11. Ofcom should consider their long-term strategic goal of promoting competition and ensuring that markets work effectively for customers. It is crucial that as part of this review Ofcom ensure that competition is not distorted in the market.

CYBER SECURITY

12. We have strong reservations about some of the proposals on cyber security. We believe it is important that work in this area needs to be independent of Government and at the very least, transparent.
13. It is also unclear which elements of Ofcom's work on cybersecurity are mandatory, which are guidance, and which are Ofcom's own initiatives to further its understanding of the sector/issues. For example, TBEST testing is due to be implemented this year by Ofcom, which we noted was part of the non-binding Network Security and Resilience guidance issued in late 2017, yet now it proposes that they will be applying this to all CPs at their expense.
14. Increased activity by Ofcom may actually clouds the environment rather than adding greater clarity. For example, we currently have the Network Security and Resilience guidance and now Ofcom proposes a new cyber assessment framework. How do these relate and interact? Under what powers is Ofcom developing this? Which providers are in scope?
15. While we understand that Ofcom has some new responsibilities thanks to the NIS Directive, we are not convinced that this justifies all of the activities in Ofcom's Draft Annual Plan. There are also many bodies that have varying degrees of involvement and expertise in this area e.g. Government (DCMS / Home Office / Cabinet Office); NCSC, ICO, Ofcom etc. This is also not taking into account larger European and global bodies and requirements. This span of responsibility and multiplicity of stakeholders is difficult for CPs to manage and provides great uncertainty. We would encourage Ofcom to carefully define its role and map that with other relevant bodies so as to provide clarity to industry about the division of responsibilities.
16. Ofcom also should understand that cybersecurity is now a key consideration for all businesses, and always has been for CPs in particular. CPs are highly incentivised to pursue strong cybersecurity practices for commercial reasons as the risks are high e.g. fines under GDPR and NIS Directive; significant brand damage; but also large revenues sources in the corporate cyber services sector. Ofcom should take these into consideration before it considers that intervention in the market is necessary.

OTHER AREAS OF CONCERN

17. **Numbering:** We are broadly supportive of Ofcom's proposals on numbering management. The initiative to exploring the development of a centralised numbering database to help with CLI authentication and porting is welcome as is the work on the use of blockchain technology for number management. We would however recommend that Ofcom learns from the experience, both good and bad, of other countries which have implemented similar systems, e.g. Ireland's 2017 implementation of a porting database. A database could be useful for many things; however Ofcom should not see this as a silver bullet which will resolve all numbering or CLI issues. For example, authenticating numbers from international countries is still not possible without a global database.

18. **Enforcement:** With regard to enforcement we would like to see Ofcom take greater care with s.135 compliance. These requests are particularly difficult for our members to deal with since they usually concern very high stakes matters, short deadlines and complex information sought by Ofcom. Ofcom itself must accept that s135 requests are hard to draft and should be collaborative where possible. This should include the use of draft information requests in the majority of cases to help work together with CPs to get the right information. Similarly, we urge Ofcom to carefully consider its enforcement priorities especially for own-initiative cases to where there is true evidence of harm.
19. **Broadband USO:** In relation to delivery of the broadband USO we note that there is no mention in the annual plan of how this will be funded. This is causing a great deal of uncertainty as to whether CPs should be planning to contribute to any funds.
20. **IP Interconnect:** Finally, we welcome the announcement of the IP interconnect review, an area in which we have been highlighting problems to Ofcom since 2017. A regulated IP interconnect product is urgently needed to avoid harm caused by discriminatory, bilateral agreements being forced on Cps by BT. BT is not engaging on this topic with industry who seek a fair, non-discriminatory and transparent reference offer for IP interconnect, and as such, regulatory intervention is required. The imbalance of

bargaining power seen in regulated markets remains and yet in the context of IP interconnect its impact is unrestrained by regulation. The proposed timings in the Draft Annual Plan do not appear to be addressing the issue quickly enough.

CONCLUSION

21. UKCTA supports Ofcom's long-term strategic goals but has some detailed concerns about how Ofcom plans to achieve them.

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