



Ofcom Annual Plan 2016/17

TalkTalk response

March 2016

1. TalkTalk Annual Plan Response

- 1.1 2016/17 will be a decisive year for the telecoms industry. With a wave of consolidation facing the sector and Ofcom's Digital Communications Review concluding, the decisions taken over the next twelve months will dictate how the market evolves over the next decade and the services consumers receive. Acting to guarantee the market is structured competitively is the most effective way of ensuring consumers benefit from high degrees of choice, investment, innovation and low prices. Without a competitive structure, Ofcom will be forced to rely on behavioural regulation that is less effective, more complex, subject to lengthy dispute and ultimately drives up customer bills.
- 1.2 We welcomed Ofcom's recognition in the Digital Communications Review that the current Openreach structure is not fit for purpose and that urgent reform is needed to secure the market customers deserve. It is critical that Ofcom now moves quickly to set out detailed reform proposals. Crucially, this process should be inclusive and transparent, rather than conducted through private negotiations with BT Group.
- 1.3 Given market structure issues are being thoroughly examined as part of the DCR and merger review processes, we do not propose to repeat those arguments in response to the Annual Plan. Instead, we wanted to focus on a series of reforms designed to empower consumers and help them to get a better deal from the telecoms market. We also comment on the need for appeals reform.

2. Improving consumers' ability to switch

- 2.1 We welcome the Annual Plan's commitment to improving switching, but urge Ofcom to be bolder in committing to finally implementing gaining provider led ('GPL') switching across all product bundles during 2016/17.
- 2.2 The ability of consumers to easily switch provider is an essential component of a competitive market. As the recent Competition and Market Authority investigation into the energy industry demonstrated, a market characterised by low levels of switching means some suppliers know they don't have to work hard to keep these customers.¹ Those customers will experience higher prices and worse service the longer they remain loyal to their provider. For the market as a whole, it means less product innovation, less investment and a reduced incentive to uncover cost efficiencies. This particularly harms vulnerable groups, who represent a disproportionately large number of non-switchers.
- 2.3 Ofcom's own research suggests that the current telecoms switching process is not fit for purpose. Ofcom's 2014 Consumer Experience report found that switching levels in landline, broadband and mobile declined 2013, although did recover in 2015. Switching levels in telecoms are also lower than in comparable industries, such as energy and insurance. To address this, Ofcom should:
 - **Simplify the switching process** – Ofcom is right to promote GPL switching. By removing complexity from the process, GPL systems make it easier for customers to move and reduce consumer harm, such as the 1.2 million mobile customers that are double billed or lose service whilst switching each year. They are also more transparent, removing the incentive for providers to reserve 'hidden' best deals for customers who threaten to leave.

¹ Energy market investigation, notice of possible remedies, CMA, 7 July 2015.

https://assets.digital.cabinet-office.gov.uk/media/559aac8eed915d1592000023/EMI_Remedies_Notice_-_Final.pdf

Despite attempts by Ofcom to extend GPL switching, the system remains fragmented and confusing for customers. GPL switching applies to some broadband and landline services, but not all and does not include TV or mobile services. As consumers increasingly look to save money by bundling services together, the fragmented switching system is not fit for purpose and is falling further behind consumer trends.

The Government's Switching Principles, published in October 2015, argued that switching systems should be GPL. Therefore if legislation is required to deliver GPL systems in telecoms, Ofcom should make that clear to Government. Ofcom has been consulting on GPL switching since 2006. Each year that Ofcom delays reform is another year that consumers find it harder to secure better deals or improved services. Consumers have waited too long. Rather than additional consultation, the Annual Plan should set out a clear plan to finally deliver GPL switching process that applies across all fixed, broadband, TV and mobile product bundles.

- **Encouraging customers to consider switching** – The Annual Plan should also include measures to encourage customers to consider switching. For instance, there could be a requirement on providers to draw the customer's attention to the possibilities of switching on their bills, or on the customer's online account page. Alternatively, customers could be provided annually with a detailed summary of what services they have with their provider and how much they have spent on their communications services in the previous year. This summary should be sufficiently detailed and easy-to-understand such that the consumer can use the information to understand whether they may be better off with a competing provider. There are precedents for this approach; it has worked well in financial services.

3. Nuisance calls

3.1 We welcome the Annual Plan's commitment to tackle nuisance calls, including measures to monitor traffic; work with the ICO to reduce calls; and taking enforcement action against those generation silent calls. Nuisance and scam calls are a growing source of customer anxiety and frustration. They can leave vulnerable customers in particular afraid to pick up their own phone, or exposed to criminal gangs seeking to defraud them. Ofcom should strengthen the Annual Plan by:

- **Banning providers charging for privacy tools** – Most major providers offer suites of privacy tools that can help customers to tackle unwanted calls. These include the option to ban anonymous numbers contacting them; banning the last number to call them from contacting them again; and offering caller line identification, so customers can see who is calling them before deciding whether to pick up. In 2014 TalkTalk took a stand against nuisance calls and made privacy features free to every customer, but other providers still make customers pay for their privacy. Ofcom should explore steps to ban this practice.
- **Requiring providers to block nuisance calls at a network level** – Providers should be blocking as many nuisance and scam calls at a network level, before they reach customers. For nearly two years, TalkTalk was the only provider to block known nuisance and scam calls at a network level, including those with a CLI of less than 8 digits. We are pleased to see that some providers are finally following suit. We currently block 70 million nuisance and scam calls to TalkTalk customers per month, over 17 per customer. Given the direct consumer harm that results from the growth in nuisance calls, the Annual Plan should be amended to

include requiring all providers to offer network level protection from nuisance calls at no cost to customers.

4. Pricing Transparency

- 4.1 Ensuring that customers can easily understand and compare prices is an essential component of a healthy market. We welcome the Annual Plan's commitment to strengthening transparency, but urge Ofcom to go further by exploring 'all in' pricing across product bundles.
- 4.2 Ofcom's own research, in collaboration with the Advertising Standards Authority, shows that current telecoms pricing confuses customers. When tested, more than a third of people calculated the price of a package wrongly after viewing an advert, and almost a quarter were still unable to work out the total cost per month after viewing the advert twice.
- 4.3 In TalkTalk's response to the Digital Communication Review we urged Ofcom to introduce 'all in' pricing, with a single headline price for services. The current system of separating line rental charges and not making line rental charges prominent incentivises firms to conceal rising customer bills by allocating price increases to line rental charges, whilst keeping headline package prices low. The practice reduces competitive pressure in the market, because providers are not competing on all price points; makes it difficult for customers to understand the true cost of services; and particularly disadvantages customers who only purchase a landline service because they do not draw any benefit from competitive pressures on package prices and are in effect paying more for less.
- 4.4 TalkTalk welcomes the announcement that from May 2016 'all in' pricing will be introduced for landline and broadband services. It is something we have already launched for our fibre-to-the-premise trial in York. We would urge Ofcom to explore going further, including the option to introduce 'all in' pricing across quad-play bundles and providing the total costs over the contract life. Strong leadership by Ofcom and the ASA is required to ensure providers moving to all in pricing do not suffer from anti-competitive outcomes, with providers gaming the system to exacerbate customer confusion over pricing.

5. Appeals Reform

- 5.1 The current appeals regime is a barrier to Ofcom being the strong consumer champion customers need. The Annual Plan should be amended to include a Commitment to working with Government to reform the appeals regime.
- 5.2 The low threshold for appeal makes it too easy for providers to challenge Ofcom decisions on minor points of detail. That gives disproportionate power to larger operators that have bigger legal budgets than Ofcom, allowing them to game the system with spurious appeals that delay regulatory progress. It means Ofcom operates with the constant threat of appeal, diminishing their willingness to be brave. The system ensures that Ofcom's limited resources are tied up defending old decisions, rather than addressing the needs of consumers today. The net result is a slow, expensive regulatory system, that drives up customer bills to pay for spurious litigation.
- 5.3 BIS consulted on a number of revisions in June 2013. We agreed with much of what was proposed and we think that that proposal provides a good starting point for considering future reform. In particular:
 - We agree with the proposed modification to the standard of review whereby there should be a presumption that appeals should be heard on a judicial review standard unless there are specific legal or policy reasons for a different approach;

- There should be limits on the length of appeals and appeals that are unfocused should be dismissed;
- We strongly agree with BIS that confidentiality rings should be introduced in the administrative phases since this will improve regulatory decisions; reduce the number and breadth of appeals; and speed appeals; and
- We consider that appeals should be heard by specialist bodies rather than general courts since this will ensure higher quality and quicker decisions.

6. Conclusion

- 6.1 These measures do not negate the need to address structural issues in the market, but taken together, they would create a more customer-focused market, underpinned by an emboldened regulator capable of standing up for consumers.