

Ofcom draft Annual Plan 2016-17 – response from the Welsh Government

The Welsh Government welcomes this opportunity to comment on Ofcom's Draft Annual Plan for 2016-17. We will provide comments below on Ofcom's proposed priorities and work plan which are of importance to the Welsh Government.

Public Policy

In general we are supportive of the issues which Ofcom proposes to address in the forthcoming year. We are particularly pleased to note that the current draft annual plan confirms that Ofcom will work with the Welsh Government to appoint an Ofcom Board member for Wales. The Welsh Government will continue to discuss this matter with Ofcom Wales officials and the Department for Culture, Media and Sport (DCMS) in order to progress the appointment process.

We note that Ofcom refers to developing a Memorandum of Understanding with the Welsh Government and the National Assembly for Wales. The Welsh Government looks forward to working with Ofcom to agree the scope and detail of the document.

We note with interest the reference to increasing Ofcom's visibility and presence in Scotland in 2016-17. It would be useful if Ofcom could provide further details regarding this decision in the final version of its annual plan and set out its intentions for any comparable expansion in the other devolved nations, including Wales, in order to ensure parity with Scotland.

Delivering goals across the UK

We note, in paragraph 4.14, that Ofcom will continue to work with the Welsh Language Commissioner in relation to the Welsh Language Standards. However we would suggest a change of wording from '...work with the Welsh Language Commissioner and her officials to implement a new Welsh Language Standards regime ...' to '...to implement a new Welsh Language Standards legislative framework'.

In addition, we suggest a change of wording in paragraph 4.15 from 'Devolution to the Welsh National Assembly is ongoing' to 'Devolution is ongoing and we will continue to work with the Welsh Government and National Assembly for Wales... '.

Protect consumers from harm

In making communications work for everyone and protecting consumers, especially vulnerable groups at risk of harm, more could be done by Ofcom to help increase media literacy amongst young people in particular. There is an opportunity to work with others such as Learning Wales¹ and Digital Literacy Resource for Wales² in ensuring that school learners get access to bilingual information about safety and digital publication implications.

¹ <http://learning.gov.wales/resources/improvementareas/curriculum/programmes-of-study/ict/?lang=en>

² <http://www.digital-literacycymru.org.uk>

Broadcasting

Context

Since the Welsh Government responded to Ofcom's draft annual Plan for 2015-16 there has been much activity in the field of broadcasting. Ofcom will be aware that we responded to its third review of public service broadcasting; the themes of particular importance to the Welsh Government and on which we made our views known included: constitutional arrangements and accountability; BBC Charter Renewal; levels of investment in PSB; quotas for production; opportunities for the independent sector; economic impact of PSB; programming for Wales and portrayal; Ofcom's regulation role; and changing models of delivery and the risks and opportunities this brings. We do not intend to repeat here the views expressed in that response but the full document can be found on Ofcom's website³. Likewise, the Welsh Government responded in October last year to the UK Government's consultation on the BBC Charter Review and our response can be viewed on the Welsh Government's website⁴.

Radio Spectrum

One of Ofcom's main legal duties is to ensure that radio spectrum is used in the most effective way. Like Scotland and Northern Ireland, Wales has many remote and rural areas where it is more difficult to provide good quality communications services.

As noted in our response last year to Ofcom's Public Service Broadcasting Review consultation, it continues to be of concern to the Welsh Government that listeners in some parts of Wales have difficulty in accessing BBC Radio Wales and BBC Radio Cymru.

We recently wrote to the Secretary of State for Culture, Media and Sport to reiterate our concern about the availability of DAB services in Wales especially in mid and west Wales. The Welsh Government is encouraged to learn that discussions have taken place between the UK Government, the BBC and Ofcom to discuss a potential solution to the availability of the national BBC stations on DAB in mid and west Wales. We look forward to receiving further information on the options on the table in due course and to a suitable solution being put in place during the forthcoming year.

Mergers and acquisitions

The draft annual plan refers to mergers of commercial radio stations. Wales only has three independently owned commercial radio stations, with the remainder being part of larger groups. The Welsh Government would not wish to see further relaxation or removal of the current localness rules.

Approach to regulation

In relation to the regulation of radio, the Welsh Government notes that Ofcom will be working with the UK Government in 2016/17 to implement any outcomes from its review of radio regulation. As the reach of DAB and the services choice it provides

³ http://stakeholders.ofcom.org.uk/binaries/consultations/psb-review-3/responses/Welsh_Government.pdf

⁴ <http://gov.wales/docs/drah/publications/151110-wg-response-dcms-consultation-bbc-en.pdf>

continues to improve, it is more important than ever that a regulatory regime be established for DAB which provides for news and local content requirements similar to those which already exist for analogue radio.

Work Plan for 2016-17

In October 2015 we responded in detail to the DCMS consultation on the review of the BBC Royal Charter. The Welsh Government has a formal, consultative role in the Charter review process and we are working to ensure that the BBC and other public service broadcasters deliver the services that the Welsh people need and deserve. We look forward to the publication of the White Paper in late May and to further close working with the UK Government, the other devolved administrations, the BBC and Ofcom, as appropriate, to agree the final Charter before the end of the year.

We have noted three pieces of work in particular which Ofcom will undertake during the forthcoming year, namely reporting on the UK communications market, reporting on the status of the UK's electronic communications networks and services, and reporting on public service broadcasting. We have also noted the timing of these pieces of work in the second or third quarters of 2016-17. These reports are therefore likely to be published prior to the results of the BBC Charter Review in late 2016. The Welsh Government therefore urges Ofcom to provide updates to these reports as needed following the conclusion of the BBC Charter Review process, once Ofcom is able to assess the impact that the new Charter may have in these areas.

The Welsh Government also notes that Ofcom will continue to fully support the implementation of the Creative Diversity Network's on- and off-screen diversity monitoring system 'Diamond' and will continue to work with the Equality and Human Rights Commission. In this connection we were surprised to see that a specific reference to promoting diversity in broadcasting only appears in the England segment of 'Section 4: Delivering our goals across the UK'. This is clearly a UK wide issue and we would urge Ofcom to acknowledge this in the final version of this annual plan.

The Welsh Government has referred to the importance of cultural diversity in both its response to the BBC Charter Review consultation and Ofcom's consultation on Public Service Broadcasting. The portrayal of Wales in the UK media does not reflect the cultural diversity and richness of Wales and its people. The definition of diversity should encompass the cultural diversity of the nations and regions of the UK. The Welsh Government believes that Ofcom should acknowledge this – in relation to Wales as well as the other devolved nations - and include a reference to it in the best practice guidelines that it intends to draft during the first quarter of the year.

ICT Infrastructure

Mergers and acquisitions

The takeover of EE by BT and the proposed acquisition of O2 UK by 3UK could have profound effects across the telecommunications market. While we understand

that these issues will be examined through the Strategic Review of Digital Communications and other market reviews, a commitment to look specifically at these effects would be welcome in particular the impact on delivery of services in rural areas and those of marginal economic viability.

Ensuring adequate quality of service from Openreach

The apparent lack of accountability of Openreach, and a lack of competition, is causing concerns among consumers and businesses in Wales.

For example, a project to improve connectivity to schools throughout Wales has suffered significant delay with seemingly no mechanism to achieve sensible resolution through Openreach. The project suffered:

- Changes to committed delivery dates with little notice
- The impenetrable 'deemed consent' practice
- Inability by Openreach to prioritise orders
- Inability to novate orders from one Communications Provider to another Communications Provider prior to delivery
- Inability to cancel orders without incurring enormous costs while no service has been received nor looks likely to be received in some cases

All of these issues have led to delays in getting schools connected, sometimes very significant delays of over two years.

The terms 'adequate quality of service' and 'continued monitoring' highlighted in the draft plan suggests settling for the status quo. We feel that more ambition is required to improve the quality of service. An enhanced focus on the scrutiny of the performance of Openreach and continuing improvement in quality standards is called for.

Mobile

The annual plan suggests that action to improve mobile coverage particularly in rural areas is not going to be a priority over the next year. While improved information about mobile broadband coverage is welcome there is little information about how Ofcom will encourage the extension of mobile coverage.

Undoubtedly the agreement between the UK Government and mobile network operators on coverage and the population coverage obligations attached to the 4G spectrum auction will greatly improve coverage but more work needs to be done to improve coverage in areas unlikely to benefit.

Welsh Government set out a range of interventions to help improve mobile coverage in rural areas in the response to the Strategic Review of Digital Communications. Whilst not all can be completed within the annual plan period a significant amount of work could be done to work towards them or at least into their viability. We feel this should be reflected in the annual plan. The interventions are as follows:

- With mobile network operators requiring fibre to provide backhaul, there is an opportunity, particularly given the significant investment of public funds in the Openreach network via the superfast broadband programmes, to create a class of price regulated fibre products for use by MNOs specifically rural areas. This is an important element in helping to reduce operating costs and make investment a more realistic proposition in areas of marginal economic viability.
- The introduction of price regulation of fibre for use by mobile networks will also help encourage wholesale infrastructure providers to invest in those areas that will lie outside of the usable mobile coverage.
- A commitment to introduce a presumption towards geographic coverage obligations in future auctions of spectrum would be welcome. This will help to encourage a move towards coverage as close to 100 per cent as practicable and to ensure that key communications routes, such as the road and rail networks, have consistent coverage.
- Enabling customers to connect with whatever network is available and to switch seamlessly between networks would greatly improve the usability of mobile across Wales and therefore the customer experience. The introduction of mobile roaming would be welcome in rural areas where, for example, there may only be a usable signal available from one network operator.
- Exploring the benefits and challenges of establishing a supplier neutral wholesale network for mobile infrastructure in areas where capital and revenue costs make it unattractive for mobile network operators to invest.

Approach to regulation

We believe that a one size fits all approach to regulation and a presumption against it could have a detrimental impact on rural areas, particularly where the population density and topography mean the role out of mobile and fixed networks are economically unviable. A geographically differentiated approach to regulation would mean that regulation could be pared back where the market is functioning well and introduced as appropriate where there is significant competitive failure and where the market needs to be encouraged or directed to intervene, for example as stated above, through price regulated backhaul and geographic coverage obligations.

Enterprise connectivity

There is little in the annual plan on enterprise level connectivity. As highlighted in our response to the strategic review of digital communications access to dark fibre is particular area of concern. The UK is reliant on BT's competitors to offer dark fibre services. Areas beyond London are poorly served by these competitors, so businesses which require such service are far less likely to invest in other parts of the UK beyond London.

Access to dark fibre is of direct interest to the Creative Industries, ICT and Financial and Professional Services sectors in Wales and these sectors. Diversity and resilience of supply of these services is an issue in Wales.

Providing access to Openreach dark fibre would have positive economic benefits in helping attract major organisations to base headquarters and major operational functions in Wales.

The annual plan should outline how Ofcom will work to address the issue including how Openreach will be directed to offer open and equal wholesale access to dark fibre services on a price regulated basis. This would allow other businesses to quickly gain access to these services and other providers to compete on a more level playing field.

Work plan for 2016-17

Consumer issues: We welcome the recognition of the difficulties that bundling of services creates for consumers in choosing between bundles particularly in terms of price transparency. However, we would like to see more specific information in the annual plan about what Ofcom intend to do to address the issue.

We would also like to see action to direct providers to be more transparent about the whole cost of contracts, for example including line rental, rather than focusing on the headline price.

Helping SMEs to engage in communications markets: It would be helpful for there to be a dialogue on the research into SMEs' needs between Welsh Government and Ofcom. Welsh Government are working in partnership with the Cardiff Business School to develop a broadband research and intelligence function as part of a national EU funded programme aimed at helping SMEs exploit superfast broadband.