



BT's response to Ofcom's consultation document

"Draft Annual Plan 2015/16"

26 February 2015

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

Introduction

1. 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.
2. We broadly support the objectives and priorities set out in the draft plan and we believe it identifies the major programmes for the year ahead. However, there are additional projects that we believe Ofcom should address, as well as areas where Ofcom should take a more proactive approach.
3. Our comments are set out in this response, grouped by the three following topics:
 1. Potential changes to Ofcom's overall strategic 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 purposes

Ofcom's overall strategic approaches and purposes, set out in their draft Annual Plan are as follows:

- Promote effective competition and informed choice;
- Promote opportunities to participate;
- Protect consumers from harm;
- Secure optimal use of spectrum; and
- Maintain audience confidence in broadcast content;

BT broadly agrees with these purposes as well as the overarching purpose of "Contribute to and implement public policy defined by Parliament". However, Ofcom should also consider the following points when considering its purposes:

- Ofcom identifies that increased competition can foster investment however it should also highlight that often investment is required in order to foster competition. As such Ofcom should always keep in mind that it needs to incentivise investment by ensuring the regulatory framework provides investors with reasonable regulatory certainty;
- The nature of the markets that Ofcom regulates means that often a regulatory impact in one market affects the ability of a firm to compete in another. For this reason Ofcom needs to ensure that when pursuing its strategic purposes it does so in a way that ensures consistency across markets and industries to create effective competition in all areas;
- Ofcom mentions its role as a representative of the UK's position within international fora. It is important given the competitiveness of the UK markets in comparison to others that Ofcom uses this role to promote consistent application of best practice internationally in order to ensure effective cross border and within country competition where often UK firms are at a disadvantage against incumbent opposition.
- Ofcom's obligation under the Communications Act 2003 to reduce the burden and complexity of regulation should remain central to Ofcom's work in 2015-16. Wherever possible Ofcom should seek to remove no longer required controls and obligations in non-SMP markets.

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 SME Market

Ofcom states it will assess the SME market to "ensure good outcomes for SMEs". While BT supports Ofcom's review of this market's extremely diverse needs and supply chain options, we would remind Ofcom of its obligation to minimise the burden of regulation and to encourage non-SMP markets to operate effectively and transparently through best practice and not unnecessary regulatory interventions. BT strongly supports Ofcom's focus on protecting business customers from potential mis-selling and looks forward to working on this with Ofcom.

2.2 Pay TV

Ofcom has acknowledged some of the competition issues within the Pay TV market particularly with respect to the switching process and the review of the Wholesale Must Offer (WMO) that is currently underway. However Ofcom has only categorised its WMO review as "other significant work" and not as a strategic priority. Significant competition issues problems persist in relation to pay TV, as Ofcom acknowledges in its current WMO consultation. It is clear that the current WMO (which remains subject to appeal) has failed to deliver fair and effective competition in relation to pay TV – as the recently concluded Premier League auction demonstrates. Addressing the enduring, structural issues that persist in pay TV should therefore remain a strategic priority for Ofcom, and not be relegated to 'other significant work' which may result in it enjoying less focus or resource within Ofcom.

We therefore believe Ofcom should make addressing competition problems in pay TV one of the main strategic 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.

2.3 Bundles and consumer switching

BT supports Ofcom's focus on consumer switching, however we reiterate that it is essential to ensure a level playing field across the products and markets and that any improvements to switching regulations should be applied consistently. It is in the interests of consumers that priority be given to pursuing Gaining Provider Led switching in relation to cable as well as copper networks and also in relation to bundled services which are becoming ever more prevalent.

This increased prevalence of bundling also increases the necessity of consistent contractual protection for consumers across all the elements of such bundles. For example Ofcom should ensure that consumers' abilities to switch due to mid-term price increases apply to all services in the bundle including the pay TV element. Otherwise there is a risk of competitive distortion where providers can increase the price of one service but not another.

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.

2.4 Nuisance calls

We applaud and support Ofcom's efforts on nuisance calls and are pleased to see that tackling these has been highlighted as a priority for Ofcom. We look forward to continuing our work in this area that includes leading industry and working together with Ofcom on nuisance issues.

2.5 Non-Geographic Call Services (NGCS)

We support Ofcom's plans on NGCS, though we recognise that in implementing the required changes Ofcom may encounter issues and obstacles that could delay the process. We believe that it is imperative that the deadline for implementing any changes is achieved wherever possible and if there are delays or issues in specific markets governed by NGCS then these should not be allowed to impact on the implementation the rest of the programme.

2.6 Spectrum

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.

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.

2.7 EU and International policy

Ofcom's draft annual plan makes several references to its role within the international arena, and stresses its work with and within international bodies. However the draft is particularly light on Ofcom's objectives and plans of how it intends to use its profile to shape the regulatory environment internationally. We believe Ofcom's goal should be to ensure that its pro-competition agenda is pursued abroad as well as at home. Including in the following areas:

- Significant differences remain in the way the common EU regulatory framework is implemented across different Member States. In view of this, we encourage Ofcom to continue to work with BEREC to promote consistent application of best practice across the EU. Particularly, given that the current draft of the Telecoms Single Market Regulation no longer includes the earlier section on the harmonisation of wholesale access services for cross-border and within country business service provision (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 next framework review to ensure open and transparent competition..
- Any legislation proposed by the European Commission on Net Neutrality as part of the Telecoms Single Market initiative must be fit for purpose, ensuring that it is sensible, fair and that it is 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. NRAs should take due account of new technologies and the impact they may have on consumers' behaviours when they consider appropriate levels of regulation of relevant markets, to ensure a consistent approach across services sitting in the same market though based on different technologies. National regulation, traditionally applied to telecom services, is no longer suitable for new services which are cross-border by nature. The review of the regulatory framework needs to take

account of economic bottlenecks across all converging sectors, including those arising on non-telecoms platforms.

- Outside 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.

We would like to see Ofcom at the forefront of these issues and ensuring they are incorporated into the international agenda.

2.8 Future voice

We are pleased to see Ofcom recognises the importance of considering how the industry will move into the next generation of fixed location voice networks and products. We look forward to working with Ofcom on identifying and addressing issues that might arise, and in adapting regulation to ensure it is both appropriate and proportional to support and encourage investment and innovation and to give appropriate incentives during the transition period. However, we urge Ofcom to undertake an urgent review of power backup needs for future voice services, to give clarity to all stakeholders regarding ongoing technical requirements and commercial consequences. Early clarity will enable informed investment decisions to be made that could have significant impacts on the direction and speed of development of post-PSTN voice services.

2.9 Review of the Universal Service Obligation (USO)

We feel it is important that Ofcom considers how it can best help represent the needs of UK stakeholders in future consultations or revisions of the Universal Service Directive by the European Commission. It would be helpful if beforehand Ofcom were to review the current arrangements in the UK to assess whether they are still fit for purpose and how they continue to be funded: public payphones provision is an obvious candidate for review, as is the impact of the expected move from PSTN to IP-based voice services.

3. Specific areas for deregulation or simplification

3.1 Managing disputes efficiently

We are disappointed to see that Ofcom has not included in its plan any proposals on looking at how it addresses disputes. BT believes that further guidance on how Ofcom intends to exercise its dispute resolution powers given the Supreme Court judgment in the 08X disputes would be helpful for stakeholders in enabling them to judge the factors such as the levels of evidence required, the burden of proof, timescales and Ofcom's role where no SMP obligations or access conditions apply.

It would also be useful to know 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 (SIRs)

It is clear from the responses to the call for inputs that across industry the level of information required by Ofcom to complete its work is increasing and is therefore increasing the demand on those responding to SIRs. We would encourage Ofcom to work together with industry to look at ways in which the process can become more efficient for both the benefit of CPs and Ofcom, and that Ofcom consults on, and then issues, updated guidance on its approach to managing requests for information.

3.3 Regulation of legacy services

Ofcom has identified the necessity to look at options for future voice products and how regulation might need to adjust as a result. Similarly there are many areas where innovation and progress has already taken place as a result of technological and other developments. This means that many electronic communications services on legacy platforms have or will enter long-term decline and as such Ofcom should consider whether regulation needs adjusting to reflect the developments. In our view, simplified, light-touch regulation may be appropriate for such services: 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 with increasing risk of failure and discourage customers from migrating to modern, more efficient alternatives.