Ofcom's Draft Annual Plan 2015/16

EE's response to the consultation

February 2015

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Introduction and Summary

EE welcomes the opportunity to comment on Ofcom's draft Annual Plan. Ofcom have a duty to carry out a number of activities, and whilst we could disagree on the way Ofcom carry out these activities, we would like to focus in this response on the more discretionary side of Ofcom's activities and on transparency in the way Ofcom use their resources. Below we address the following subjects:

1. Ofcom should provide greater clarity on the criteria it uses to prioritise more discretionary work streams.

2. Ofcom should set out the approach it uses to provide information to consumers and review the effectiveness of the information provided.

3. Ofcom should provide insight into the cost of its main projects, and evaluate their outcome; and

4. Resource usage.

In addition to this, EE considers that Ofcom should initiate a specific project on reviewing the General Conditions (including, but not limited to, rationalising the requirements to provide information to consumers) to ensure that they are proportionate, coherent, up to date and relevant and remove any duplication with existing general law, especially with the new Consumer Rights Bill taking effect in October this year. This is a project which has been discussed several times in the past but which should now become a priority.

1. Greater clarity on the criteria Ofcom use to prioritise more discretionary work streams

We consider it would be useful if the Annual Plan could be more explicit on setting out the criteria by which more "discretionary" work streams are taken forward. There are a number of projects which can take up significant regulatory resource (both for communications providers and Ofcom itself) where Ofcom have a choice (as opposed to a duty) whether or not to take them forward. The criteria used to decide whether or not to proceed are not always clear. In the draft Annual Plan, Ofcom set out four factors it considers when making decisions around priorities:

i.   ownership of the issue / Ofcom's remit;

ii.   scale and clarity of deliverables;

iii. importance of the issue; and

iv.   resource commitment.

Whilst we welcome this attempt to clarify its process, we consider this does not provide enough clarity, especially with respect to the third factor, importance of the issue. We believe that Ofcom's more discretionary work streams, in particular in the consumer protection and consumer empowerment area, should be driven by an assessment of harm and/or market failure, and that this

assessment should be clearly articulated and, where possible, quantified. We have seen examples in the past year of Ofcom starting projects where Ofcom failed to set out such an assessment, or only described the harm in qualitative terms, or by reference to complaints numbers. Some of these projects have resulted in interventions with a serious impact on the market. In addition, Ofcom should clearly set out what evidence is used in order to ascertain whether a particular area warrants further investigation.

The same holds for opening or extending compliance monitoring programmes. Again, it would be beneficial for industry to be provided with the reasons for opening or extending a monitoring programme, based on an assessment of (alleged) consumer harm.

2. Ofcom's approach on providing information to consumers

EE have observed a significant increase in the amount of information Ofcom publishes for consumers. Whereas EE can see the value of the providing relevant and accurate information in a number of areas to consumers, we believe, again, that Ofcom should be clearer about the circumstances in which they consider information is the right remedy, and, if it is, make a conscious decision about which party would be best placed to provide this information. Ofcom's Consumer Policy statement, from 2006, sets out the following:

'We recognise that in some cases the market may not deliver to consumers the information they want or need, or may fail to deliver information to certain groups of consumers. Where the market does not deliver the information consumers want or need, Ofcom will consider appropriate intervention where this is deemed to be effective in improving the situation. In such cases, Ofcom will choose the most effective and proportionate option. This could be a self/co-regulatory initiative, an initiative that would involve the provision of information by an independent third party or Ofcom providing the information itself'.

As far as we know, this statement has not been updated, but we feel that, in practice, Ofcom has moved away from it. We would like Ofcom to update this statement, and clearly set out the circumstances under which it will provide information. Again, we expect Ofcom to articulate what the issue, harm, or market failure is, why information would be the right remedy, and who would be best placed to provide that information.

There are a number of examples where we feel Ofcom 'decided' there was an issue which needed resolving by Ofcom providing the information themselves. In a number of these cases, there are third parties who provide similar information, often in a more customer friendly way than Ofcom, because unlike Ofcom, these organisations are set up to provide information.

- **Ofcom's fixed broadband speed report:** this is a highly technical report, hard to understand for consumers, with differences between operators being very small. The time lag between testing and publication is considerable, which makes the information quickly out of

date. There are numerous third party providers who provide this information.

- **Ofcom's mobile broadband speed report:** This is less technical, more relevant to consumers, but provides a combination of network and price plans. Again, there are third party providers who provide this information and the time lag between testing and publication is long, which is important at a time when MNOs are rolling out their networks.

- **Ofcom's Infrastructure Report**: Whilst Ofcom has a statutory duty to provide certain infrastructure related information, it goes beyond the requirements. An example is the aggregate mobile coverage map, which is a relatively high level aggregation of individual operators' maps, but so high level (local authority) that it does not provide any valuable information to customers. In addition, the map is very hard to navigate.

We consider Ofcom should update their statement on when and how it provides information to consumers, perhaps in the shape of a decision tree. Another suggestion would be for Ofcom to endorse or signpost to third parties who publish relevant information, comparable to the endorsements Ofcom provides to price comparison websites.

More generally, Ofcom should look critically at the amount of information it produces, and start to apply behavioural economics in practice. More is not necessarily better, and in a market with technologically complex products, it is important to focus on relevance in relation to the point in the product life cycle consumers are in. i.e., consumers looking for a new deal will have different information need from people who experience a problem, or who want to use a different technology.

3. Cost of main projects and evaluation of their outcome

Whilst the draft Annual Plan contains a great amount of detail about strategic purposes, proposed priorities, other significant work and programmatic work, it does not evaluate last year's initiatives, identify opportunities for improvement or provide a cost break down of where industry's money has been spent. We do not suggest having a highly detailed breakdown of every single activity carried out, but we think it would increase Ofcom's transparency if the costs of a number of substantial projects would be published, with again, an emphasis on Ofcom's more discretionary work streams. From a telecoms point of view, examples would be Ofcom's non-geographical numbers project, the mobile broadband speed measurement project, nuisance calls, and the fixed switching project.

EE would also welcome an assessment of the outcome of main projects. Where Ofcom provide information (either in the form of a report or on its website) we

would like to see an evaluation of it, in terms of customer reactions, views, usefulness, etc.

Where interventions are made, such as non-geographical calls, we would expect a comparison of the project's objectives with the actual outcomes.

The combination of cost information and an evaluation of outcomes would greatly improve the transparency of Ofcom's activities, its accountability, and would give industry better information to judge Ofcom's performance by.

4. Ofcom's resources

Ofcom's draft Annual Plan contains an ambitious list of planned activities to be carried out. EE do feel that Ofcom tries to focus on too many things at the same time, which results in consultations taking a long time, research taking a long time before it gets published (with the consequence of the results not being up to date anymore) and long response times to industry on certain issues.

We therefore suggest Ofcom undertakes out fewer projects at the same time, and that it finishes them before initiating new ones.

In terms of information requests, we consider Ofcom should better coordinate information requests sent to industry. We also recommend having more frequent informal meetings with operators, and exchange views in meetings rather than sending onerous information requests. Where formal information requests are sent, we sometimes question whether comments on drafts are actually taken on board. It would help if Ofcom would set out why comments are rejected, and which comments have been taken on board.