Draft Annual Plan 2015/2016

UKCTA Response to Ofcom Consultation

Introduction

1. UKCTA is a trade association promoting the interests of competitive 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. We welcome the opportunity to comment on Ofcom's draft Annual Plan.

2. As part of our submission we would refer Ofcom to the report published by SPC Network in November 2014[1] which highlights 3 specific areas:

   a. Ofcom should return its focus to championing competition, which will drive innovation and enhance choice and the protection of consumers.
   b. Ofcom should increase its attention to the poor quality of service from Openreach, to mitigate the effect of its effective monopoly position and ensure the development of a more competitive market which encourages innovation and quality service.
   c. UKCTA encourages Ofcom to try and replicate its successful introduction of greater competition into the domestic market in the business enterprise market

3. Once again, despite assurances given by Ofcom, UKCTA must raise concerns over the lack of planning and co-ordination across functions within Ofcom and the impact that this has on stakeholders and their ability to provide in-depth, well-reasoned and high quality inputs to Ofcom.

4. The issues span the range of inputs stakeholders are either required or are invited to submit to Ofcom, but of prime concerns are the issuing of s135 notices and responses to call for input/consultations. Many of these documents are lengthy and very complex pieces of work which require detailed consideration of the issues/proposals. Ofcom simply must allow sufficient time for stakeholders to digest requirements, consult across the various internal teams that are inevitably affected and produce an appropriate response. Such a concentration of output places extreme demands on stakeholders' resources and severely compromises the quality of input provided to Ofcom, which in turn must impact on the quality of Ofcom's decision making process.

5. UKCTA considers it is vital that Ofcom plans effectively to ensure that it utilises its own resources to maximum effect whilst taking account of the pressures, economic and logistical, faced by those parties they seek inputs from. Planning effectively so as to spread the work load over a reasonable period and trying to foresee potential stakeholder resource bottlenecks in terms of parallel work streams which require common resources would be of great assistance, as would ensuring transparency of the work programme so that industry can plan effectively. Currently, the strong impression is created that there is

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[1] http://www.ukcta.org.uk/public-2014/Development_of_UK_Telecoms.pdf

no co-ordination between Ofcom teams or departments in terms of external publications – and as soon as a document is ready it is simply issued.

6. The solutions to the issues highlighted above are fairly straightforward and should not be beyond Ofcom's powers to address. For example, if it does not exist already, we would strongly urge Ofcom to develop some form of "grid" system to plan output in a staggered manner, so it does not overload its stakeholders. Indeed Ofcom provided indications previously that they understood these issues and would address them; unfortunately given the actions of Ofcom over the past 12 months it appears there is still much to be done in this regard.

Ofcom's proposals to ensure effective competition in the provision of communications services for businesses, particularly SMEs

7. UKCTA strongly welcomes Ofcom's stated strategic priority to ensure effective competition in the provision of communications services for businesses, particularly small and medium sized businesses (SMEs). UKCTA agrees that an assessment of how far the market meets the needs of SMEs in terms of the availability of fixed networks and services, prices and quality is indeed urgently required.

8. Indeed, the report recently commissioned by UKCTA which assessed the development of the UK telecoms market over the last 30 years highlighted some of the issues faced by SMEs, specifically in terms of access to services, the quality of the services on offer and the level of differentiation between providers. A variety of proposals have been put forward to promote investment and innovation. Ofcom must consider carefully the approach to the accessibility of communications infrastructure and its configuration.

9. Whilst the level of SME engagement with the market is important, communication providers must have access to the tools to enable them to offer innovative products and solutions to drive and encourage such engagement.

Monitoring of Openreach QoS performance

10. UKCTA members were somewhat disappointed with the outcome of Ofcom's review of Openreach's QoS. Since the current Openreach service crisis began in 2012 we have seen KPIs dip yet Ofcom have not been able to enforce minimum standards on BT. We welcome the more stringent minimum standards that the FAMR brought in for copper services, however there are no equivalent measures in place for Ethernet services. The BCMR provides an opportunity to bring in minimum standards for Ethernet, however we would caution against any attempt to glide them in gradually. UK businesses cannot wait until 2019 before pre-2012 service levels are restored. Openreach have had fair warning that minimum standards are necessary for BCMR services and they should be fully enforced by 2016 to maximise the incentives upon Openreach to improve QoS.

11. UKCTA considers that Openreach's performance against its contractual SLAs is not satisfactory, and in any event we consider that the revised targets, have been set at too low a level and are not sufficiently stretching. Although this opportunity may have been

lost it now falls to Ofcom to rigidly enforce the new targets and to take prompt and firm enforcement action in the event that Openreach's performance drops below the stipulated levels.

12. UKCTA fully supports Ofcom's stated aim of ensuring compliance with the new SLAs and would welcome further insight as to how Ofcom plans to follow through with this stated priority.

Review of the BT Undertakings

13. The Undertakings are now a decade old. NGA is now a significant product that competes alongside existing regulated services like LLU. BT is in the process of acquiring a significant mobile business to integrate into its incumbent fixed business and have made significant investments in a consumer TV offering. This means that a forward looking review of the Undertakings is needed to ensure that the UK market has the correct regulatory checks and balances to enable competition to flourish and consumers to benefit. In the time horizon ahead, Ofcom needs to think seriously about how the Undertakings agreed in 2005 can be updated to provide a sound regulatory footing for our industry.

Ofcom's plans in relation to future mobile data spectrum requirements, with focus on the Internet of Things ("IoT")

14. UKCTA members fully endorse Ofcom's proposal to start planning for future mobile data spectrum requirements with a view to promoting and supporting innovation in the Internet of Things. Ofcom has already commenced work in this area with its 'Promoting investment and innovation in the IoT call for input', and UKCTA is encouraged by Ofcom's proposals to press on with this workstream, which offers enormous benefits and opportunities in terms of the development of internet based services. However, Ofcom's involvement should not simply be a trigger for fresh regulation.

15. Spectrum availability will of course play a major role in enabling growth in this area and it is hoped that Ofcom's assessment that there will be sufficient spectrum available in the next five years to support growth and innovation in the Internet of Things is accurate. However, it is vital that Ofcom continues to explore ways in which additional spectrum can be made available to Internet of Things devices and innovative ways of utilising spectrum, particularly sharing. Accordingly, UKCTA looks forward to the publication of Ofcom's latest thinking on mobile data demand, promised by Q2 2015/16.

16. Whilst spectrum availability is rightly at the forefront of Ofcom's focus as it embarks on shaping the landscape for enabling the development of innovative products and solutions made possible by the IoT, Ofcom also needs to formulate its plans and set out a clear framework to ensure the environment is compatible and conducive towards new technological developments. This will require increased flexibility and transparency to allow market-driven solutions to drive further evolution rather than highly prescriptive regulations.

17. Additional regulation is not the answer, especially as a sound policy framework is already in place to deal with many – if not most – of the issues identified relating to M2M; there is absolutely no justification for re-inventing policy specifically for M2M applications. The primary purpose of new policies should be to remove obstacles to expansion and innovation, and to create a framework for adoption; which we acknowledge, Ofcom seems to support given its statement in the 2014/15 annual plan, which states the intention to *"..understand whether there are regulatory barriers that we should seek to remove to enable the development and diffusion of M2M applications."* This indeed should be a priority to ensure the enormous possibilities of M2M can be realised. The starting point for new regulation should be that there is clear market failure and that consumers are suffering as a result – there is no evidence of consumer harm, and hence there is no rationale for such new and emerging technologies to be regulated. In addition, such regulation would act to chill the incentive for investment and innovation, which have the ability to stimulate not just the UK economy but the EU and the global economy.

18. Further to this point, M2M is not just limited to a specific service or technology; it contains various services and covers multiple areas. Accordingly, it is essential to avoid policy or regulatory mandates that favour one technology over another or which could hinder the vast potential economic and societal benefits of M2M. In order to encourage innovation and responsiveness to consumer demands, this requires governments and regulators to take a technology- and service-neutral approach to mobile spectrum, both licensed and unlicensed. Rules should avoid dictating who can own licenses and, for both licensed and unlicensed users, what technologies they can deploy or what services they can or cannot provide to their customers. To achieve such aims, closer harmonisation of regulation across the EU community is crucial to the success and investment plans for pan-European providers, another key issue in ensuring that the full potential of IoT is realised.

19. Finally, UKCTA encourages Ofcom to work to develop a framework which provides the basis for manufacturing economies of scale and global interoperability by working with other administrations worldwide to ensure that new spectrum identified for commercial mobile use is, to the extent possible, globally harmonised. The existing framework is still focused on numbering and addressing telephony services which do not fully encompass the new realities, such as nomadic use, mobile services and M2M/IoT services.

Ofcom's proposals to support industry and government initiatives to improve levels of trust in internet services

20. UKCTA members agree with Ofcom that improving levels of trust in internet services, particularly in terms of security and data protection, is of key importance in order to ensure that the full potential of IoT, cloud and other services that use the internet is realised. However, trust should be built through education not regulation.

21. Heavily regulating the Internet is unnecessary and counterproductive. It is unnecessary because all participants in the Internet ecosystem support an open Internet, and regulators can address any harmful behaviour without additional regulation. Heavy regulation of the

Internet will create uncertainty and chill investment among the many players, who would need to consider any additional regulation before launching new services.

A regulatory review for fibre services

22. As the deployment of fibre accelerates there are a number of issues that CPs will need to contend with and a clear, proportionate and fit-for-purpose regulatory framework is essential to support continued investment.

23. We acknowledge that the draft Annual Plan indicates that Ofcom intends to publish a call for inputs in Q4 2015/16 inviting stakeholders to submit their view on the key issues that may arise as a result of voice migration from legacy networks to next generation networks. We note that Ofcom also intends to consult on the topic of access to emergency services on the next generation network architectures, followed by a statement in Q2 2015/16.

24. We would urge Ofcom to consider these issues as a priority as they have the very real potential to impact on decisions being taken by CPs now. For example, Ofcom's current guidance on battery back-up, issued in December 2011, requires that a battery back-up should always be provided to support publicly available telephone service (PATS) provided over FTTP and the minimum duration of the back-up facility should be one hour. While we acknowledge the importance of customers having the ability to access emergency services the cost implications of Ofcom's existing guidance are already having a significant impact for CPs. Given the low level of risk previously identified by Ofcom and the widespread use of mobiles, placing an obligation on all-fibre providers is an unnecessary and costly measure which has the potential to act as a significant barrier to realising the efficiencies that a move to fibre-based networks will bring.

Review of the General Conditions

25. For some time Ofcom has talked about reviewing the General Conditions, however to date this has not happened. Consequently, they have become increasingly difficult to navigate and interpret. They incorporate numerous amendments to reflect revised European requirements as well as Ofcom's own regulatory initiatives. They have also become outdated due to changes in technology and the market.

26. For example, there are references in the General Conditions to "narrowband" services which require review and revision in light of the increasing availability of fibre services. .

27. It would be to the benefit of all stakeholders to ensure that the General Conditions are clear, relevant and reflect the technological and market conditions within which we now operate. This is an important piece of work that cannot be continually delayed. We note that recently, Government has driven a number of initiatives aimed at simplifying and clarifying general consumer protection law – a similar review of the General Conditions would be timely to ensure that they are aligned and there is not unnecessary duplication

of obligations. All stakeholders would benefit enormously from a thorough review of the General Conditions with the aim of ensuring they are clear and relevant.

End.