



BT's response to Ofcom's consultation on its Draft Annual Plan 2014/15

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Introduction

1. BT believes Ofcom's Annual Plan is an important document that enables all stakeholders to understand Ofcom's high-level plans for the year ahead.
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 some additional projects that we believe Ofcom should address, as well as areas where Ofcom should take a more proactive approach.
3. Before moving on to our comments, we would like to highlight a number of key concerns:

- **Strategic approach**

We would like to reiterate a key comment made in our response to last year's draft plan consultation that regulation must be able to i) keep pace with the rapid technological and market developments in the communications industry, ii) address any new bottlenecks in a timely manner and iii) ensure the removal of any regulation that is no longer needed.

- **Pay TV**

We note that Ofcom has included a review of Pay TV in the plan, but it is not listed as a priority which we believe it should be. Our view is that there should be a level playing field between fixed telecoms and Pay TV, and that Pay TV consumers should be able to enjoy the same benefits of choice and pricing that the ex ante framework has created in fixed telecoms.

- **Review of the Universal Service Obligation (USO)**

The USO is in need of urgent review, given the scale of change in the market since the obligations were introduced. Ofcom has recently committed to publishing a report on the affordability of essential telecoms services. We think this gives Ofcom an ideal opportunity to link this work to a review of the current USO provisions.

- **Mobile Market**

We are disappointed that Ofcom still does not consider a review of the mobile market imperative. We feel this is overdue and should be seriously considered given the relative consolidation and rapid pace of change that has occurred over the past couple of years.

Detailed Comments

Bundles

4. We believe that as consumers are increasingly purchasing bundles of services that include Pay TV, Ofcom should ensure that regulations designed to ensure consumer protection also capture the Pay TV element. Examples where consumer harm and confusion are likely to arise include the current approach of assigning different regulation and processes in consumer switching and price notification obligations. In the recent statement on price rises in fixed term contracts, Ofcom determined that where a bundle including Pay TV is purchased via a single contract, the relevant regulation (General Condition 9.6) will be taken to cover all elements of the bundle.
5. Whilst this is an important step forward, it means that where the Pay TV element of a bundle is provided under a separate contract, this level of protection will not apply. Ofcom should consult on whether extra measures are needed, given that consumers are likely to perceive they are purchasing a bundle even if all elements of the bundle are not

supplied under a single contract. We believe this can be done via guidance from Ofcom under the unfair terms in consumer contract regulations.

Consumer Switching

6. BT is fully engaged in the implementation plans for the first stage of Ofcom's review: the single harmonised GPL NoT switching process for voice and broadband within the Openreach network and the improvements to the existing NoT process. However we continue to urge Ofcom to prioritise its second stage – the consideration of whether switching processes could and should be extended to include other networks and technologies (in particular cable and Pay TV). At the moment Ofcom has said it will look at this in 2014, but no definite timescales or other plans have been announced, and we are concerned that this may slip again, resulting in ongoing confusion and poor customer experience.

Spectrum/Mobility

7. We note that Ofcom intends to gather data and undertake research into coverage of mobile networks, in support of its five-point mobile coverage plan, and to monitor the availability of mobile broadband. We believe that Ofcom should take more explicit action to enable and ensure early nationwide 4G availability, to ensure widespread take-up and to deliver the customer benefits promised by 4G. We believe that Ofcom should actively encourage and support innovative ways to increase 4G coverage (e.g. through the use of small cells and spectrum sharing).

Broadband coverage

8. Ofcom should ensure that the regulatory environment encourages further commercial investment in fibre deployment and take up in accordance with the Government's ambitions for a comprehensive digital infrastructure across the UK.

EU policy

9. We are satisfied with Ofcom's plans for engagement with the European Union, European Commission and BEREC.

International policy

10. We would also encourage Ofcom to pursue the principles of competition and consumer benefit in the international arena. Failure to do so results in asymmetric regulation and disadvantages UK businesses that compete in global markets. Indeed this is what is happening in the global telecommunications services ("GTS") market. The UK market is open to competition from US incumbent providers, but the US market is closed to competition because of policies pursued by the US regulator. As a result of this, UK companies cannot obtain equal, non-discriminatory access to US essential inputs required to construct GTS whereas US incumbents can obtain equal, non-discriminatory access to UK essential inputs required for GTS. Therefore, UK providers are severely disadvantaged in competing against US incumbents for the GTS business of large enterprises.
11. If this imbalance is not addressed, ultimately large enterprises with global needs will have fewer competitors to turn to in the GTS market, leading to less innovation. For these reasons Ofcom's domestic pro-competition agenda cannot be pursued in isolation. It must be twinned with an equally pro-competitive agenda internationally that allows UK providers to compete on an equal footing globally with providers from other countries.

12. In the first instance, Ofcom should direct its efforts at ensuring an international level-playing field through the EU/US trade discussions (TTIP) where there is an opportunity to remove the asymmetry between wholesale access regimes in the US and EU.

Future voice

13. As we said in our response to the Call for Inputs, a new generation of IP-based voice services will likely replace those currently provided over the PSTN. While widespread replacement of PSTN services with voice over broadband lines may be several years away, we believe that early engagement with stakeholders will be important to ensure that the characteristics and consequences of IP-based primary line voice services are understood.
14. We believe that the current set of regulatory obligations will need to change to reflect the changes in technology and existing trends in customer expectations. New technologies challenge various aspects of the current regulatory regime, and a well-informed and open debate will be needed to ensure customers, at both wholesale and retail levels, get the services and functionality that they will need.
15. Ofcom should therefore start working with BT and industry from an early stage, to understand how the existing regulatory framework would apply to these new services and to identify and initiate any changes that will be required.

Open internet

16. BT is increasingly launching innovative services and applications, especially targeting the large corporate customers, which require a full application of the principles of net neutrality.
17. The success of those services, such as One Voice Anywhere¹ and Dolby Conference², depends, among other things, on their ability to be carried over customers' mobile networks, regardless of which provider the customer has chosen. However, the commercial practices of the two mobile network operators that have not signed up to the Open Internet Code of Practice, impact the development of innovative services in the downstream market and reduce consumer choice. We would welcome the opportunity to provide Ofcom with details of the significant commercial potential which is currently being foreclosed. It is therefore a priority for BT to ensure the ability of consumers and businesses to access all forms of legal content, including the ability to access corporate voice VPN services.
18. While we have supported self-regulation to implement an open internet regime in the UK, we cannot ignore the fact that, over 18 months since the Open Internet Code of Practice was launched, a majority of UK mobile customers remain without a guarantee that they can access all legal internet content and can choose from the full range of competitive services.
19. Ofcom made a commitment in its most recent Infrastructure Report to monitor the state of the mobile market in relation to this issue. We note that Ofcom has included this monitoring activity in the plan, but we believe this commitment is important enough to be listed as a priority, especially given the growing importance of converged services in an increasingly IP world, and the planned expansion of 4G networks and services.

¹ One Voice anywhere allows access to the global One Voice network from any device; it offers a choice of cost effective calling methods, helping customers achieve typical cost savings of over 45% on voice, mobile and roaming costs.

² Dolby conference is an IP based conference call, provided on the BT One Voice platform that delivers high quality sound and voice separation, highly enhancing the customer experience while lowering the costs.

20. We would also encourage Ofcom to take a more proactive approach in enforcing the principles of net neutrality and in gathering evidence of what services end-users are missing out on as a result of key open internet commitments not having been made by two of the major operators. There is still an opportunity for Ofcom to persuade all the big players in the market for internet access to sign up to the Code. But should Ofcom fail to secure that over the coming six months, it should also plan to dedicate resources within the coming year to explore all the other available regulatory options (including new and more prescriptive rules) to ensure both consumers and businesses enjoy the benefits that increased competition could bring them.
21. While BT is following very closely the development of the EU-wide rules on net neutrality and open internet access, it also believes that the best outcomes for the UK market could be reached if the issue was addressed and resolved at national level.
22. Moreover the end-user benefits of the EU Single Market Regulation remain uncertain while it is undergoing scrutiny by the Parliament and, later this year, by the European Council. Whatever Open Internet rules are put in place they seem unlikely to be effective for another three years or so.
23. We believe Ofcom should instead guarantee the benefits of competition, in the market for the innovative services such as those mentioned above, are enjoyed by consumers and businesses in the UK sooner rather than later.

Business Connectivity Market Review (BCMR)

24. The BCMR is a very challenging review for Ofcom to conduct for a number of reasons:
 - The services it covers range from low-speed legacy products approaching obsolescence to cutting edge very high speed optical services;
 - Market boundaries are blurring, with customers increasingly meeting their connectivity needs through broadband rather than leased lines;
 - Customers range from one-man businesses to huge multi-nationals, and they include both end users and other CPs;
 - Providers include both traditional 'telcos' that are well-known to Ofcom and newer niche entrants who may not generally be on Ofcom's radar.
25. In the last BCMR, we believe Ofcom did not manage to obtain complete information on the market, and did not have the resource to fully analyse the information it did collect. As a result, the extent of competition was not fully recognised, Ofcom took an unduly 'safe' and conservative approach, and the consequence is that some parts of the business connectivity market are now over-regulated.
26. To avoid these pitfalls in the new BCMR starting this year, it is essential that the review is properly resourced so that Ofcom bases its decision on complete data and has the capability to carry out a comprehensive analysis to underpin its proposals.

Maintain Audience Confidence in Broadcast Content

27. We agree with the top level principles in this area. With regard to the plans to "...develop and implement a 'smarter' approach to licensing and enforcement that will better enable us to identify and respond to potential compliance failures", we hope Ofcom will engage stakeholders as early as possible in this process so we can work together to find ways to lift the regulatory burden. Ofcom's aim to educate consumers so they have a clear understanding of the protections which apply to different forms of content on different platforms will need engagement from broadcasters and websites. Any assistance from broadcasters/content providers should be proportionate so as to not unreasonably impact on commercial needs.

Specific areas for deregulation or simplification

28. BT believes there is scope for Ofcom to simplify and streamline some of the processes by which it works with and deals with stakeholders in order to reduce the burden on all parties. In particular BT reiterates that Ofcom should consider the following:

Dispute resolution process:

29. The process for the resolution of disputes is very important given the material impacts that can result and the high level of resource that may need to be expended. Some elements of the process work well from our perspective, for example the Enquiry Phase Meetings (EPMs) held to clarify the issues and agree the scope of a dispute if Ofcom were to accept it. However, other aspects of the process are more variable: for example the timescales for completion of the stages in the process differ between cases as do the levels of disclosure of the parties' evidence and responses. In view of this, we believe it would be timely for Ofcom to review the dispute resolution process and guidelines and how they work in practice.

Reducing the level of litigation:

30. It is widely recognised that telecoms has become more litigious, and BIS has consulted on proposals to streamline the appeals process. BT submitted its own response to this consultation. It would be useful for Ofcom to consider how the current regulatory processes including the process for resolving disputes affect the incentives for stakeholders to raise disputes and appeals. We believe there are changes that could be made to improve the quality of regulatory outcomes and reduce the subsequent litigation, to the benefit of all parties.

The Call for Inputs (CFI) process in market reviews and charge controls:

31. CFIs are a relatively new development and are still bedding down. CFIs were originally intended to be a light touch way of asking stakeholders for their initial views on which issues they would consider most relevant in a forthcoming consultation: this should allow Ofcom to focus on the key issues in carrying out its analysis and formulating its proposals.
32. In some cases however – for example in the Fixed Access and Wholesale Broadband Access market reviews and charge controls – CFIs have been more complex and have asked very specific questions, often requiring detailed and evidenced responses. This approach raises a number of issues, in particular in relation to:
- The material amount of resource that is taken up in responding to such CFIs, and
 - The time that is taken, which has the effect of compressing the timescales for the remainder of the review and limiting the scope for a second round of consultation on key issues.
33. In view of this, there would be benefit in taking stock and reviewing the CFI process with a view to making it as efficient and effective as possible.