



BT's response to Ofcom's consultation document

"Annual Plan 2014/15: Invitation to comment"

24 October 2013

Introduction

The Ofcom Annual 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.

We think it is beneficial that this year Ofcom is inviting comments in advance of the consultation. This will allow Ofcom to focus on issues that stakeholders have identified as important when it drafts the Plan for 2014/15.

Our comments are set out in this response, grouped by the three topics on which Ofcom asks stakeholders to provide their early views, i.e.:

1. Potential changes to Ofcom's overall strategic approaches and purposes;
2. Issues that should inform Ofcom's priority or major work areas; and
3. Specific areas for deregulation or simplification.

1. Potential changes to Ofcom's overall strategic approaches and purposes

Ofcom's overall strategic approaches and purposes, set out in its 2013/14 Annual Plan, are to:

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

These broad approaches and purposes are still relevant, and we do not think they need to be changed. However, Ofcom should also consider as part of its strategic framework the need to incentivise investment and to provide investors with reasonable regulatory certainty. This includes giving investors the confidence that future returns will not be regulated away once investments have survived the earlier risky phase of their lifecycles. Equally, investors should be confident that investments already made, for example in infrastructure, should not be put at risk by changes to the regulatory framework.

2. Issues that should inform Ofcom's priority or major work areas

2.1 Pay TV

In its July 2013 policy paper "Connectivity, Content and Consumers", the DCMS announced the Government's intention to consult on extending ex ante regulation to Pay TV. Given the rapid developments in Pay TV, Ofcom and the Government should work to carry out this consultation and implement the decision as a matter of priority. 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.

2.2 Bundles

Consumers increasingly purchase bundles which include voice, broadband and Pay TV. Ofcom needs to review how regulation applies across such bundles to ensure consumers enjoy a consistent level of protection across all elements of a bundle. 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 all elements of the bundle. 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.

2.3 Consumer switching

Now that Ofcom has decided that the “GPL NoT+” process should be mandated for all voice and broadband switches in the Openreach copper footprint, we think Ofcom should make it a priority to ensure that all of industry – including ISPs, CPs, resellers, wholesalers and Third Party Integrators – are fully engaged in the implementation process. Without full collaboration, so that all players can carry out systems development in parallel, it will be impossible to achieve reasonable implementation timescales and the delivery of the benefits to consumers will be delayed.

We also urge Ofcom to make it a priority to consider how and when the new switching process could be extended to cable and Pay TV switches, so that the objective of seamless bundle switching can be achieved.

2.4 Non-Geographic Call Services (NGCS)

Another key project that Ofcom should focus on next year is effective implementation of the proposals to reform non-geographic numbering to ensure pricing transparency and remove confusion for consumers.

2.5 Spectrum

There are five programmes relating to spectrum that we believe should be included in next year’s plan. These are:

- Completion of the regulatory framework for TV white spaces spectrum;
- Progress towards the award of MoD spectrum in the 2.3 GHz and 3.4 GHz bands;
- Progress implementation of the UHF long term band plan, including European harmonisation and 700MHz band arrangements and award options;
- Influencing of CEPT proposals to ITU WRC-15; and
- Developing UK positions and influencing of CEPT harmonisation measures of interest to UK stakeholders, e.g. DA2GC.

2.6 Broadband coverage

Broadband coverage is a key policy aim for the Government and we would expect the Plan to include programmes focused on working with Government and industry to extend broadband coverage beyond the current plans.

2.7 Review of the mobile market

In our response to Ofcom’s consultation on the 2013/14 Annual Plan, we raised our concerns about the changes in the mobile market. We believe Ofcom should launch a new review of the mobile sector to analyse the effects of the consolidation on the level of competition. There is an increasing trend, especially in the business market, to buy fixed and mobile services as part of the same contract. Yet the lack of regulated access to the necessary wholesale mobile services does not put fixed operators and mobile network operators on a level of playing field, thereby restricting the ability of some players to offer competitive services, to the detriment of consumers. A review of this sector is now overdue, and this should be a priority for Ofcom in 2014/15.

2.8 EU policy

Ofcom is ideally placed to make its views heard to influence and improve the effectiveness and consistency of regulation across the EU, both through BEREC and in relation to the drafting and

implementation of the Telecoms Single Market proposals. Reflecting its own national strategic approaches and purposes, we would invite Ofcom to encourage:

- Recognition of the converging nature of telecoms and media in any review of the EU regulatory framework;
- Consistent and effective access regulation, including effective implementation of non-discrimination obligations, particularly reflecting the needs of cross-border business service providers; and
- A balanced approach to net neutrality and end-user protection, protecting consumers from harm while encouraging innovation, competition and choice.

2.9 International policy

We would also encourage Ofcom to pursue the principles of competition and consumer benefit in the international arena, notably 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.

2.10 Future voice

New voice services will eventually replace those currently provided over the PSTN. Ofcom should start working with BT and industry to understand how the existing regulatory framework would apply to these new services and any changes that will be required.

2.11 Open internet

BT fully supports the principles of an open internet, opposes anti-competitive blocking and believes that reasonable traffic management should be allowed as long as end-users are transparently informed. BT believes these are all best addressed through self-regulatory mechanisms such as the Industry's Open Internet and Traffic Management Transparency Codes of Practice.

We note, however, that there remain areas of the market where end-users are not receiving the full benefits of such self-regulation. The ability of consumers and businesses to access all forms of legal content, such as VoIP services, is not universally assured at present, and neither is the related degree of necessary transparency. This has the effect of creating an asymmetry in competition as well as hindering innovation, both of which are potentially detrimental to end-users' interests. Given Ofcom's duties to promote the interests of consumers and its associated responsibilities in relation to competition and innovation, we urge Ofcom to include in its Annual Plan an investigation into whether the UK internet market is delivering the optimal competitive outcome for end-users.

This will be important regardless of what does or does not emerge from the European Commission's current proposals for a Single Market Regulation.

3. Specific areas for deregulation or simplification

3.1 Dispute resolution process

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.

3.2 Reducing the level of litigation

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.

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

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. 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.

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.

3.4 Regulatory reporting

Ofcom should complete the review of regulatory reporting to simplify and improve the quality and relevance of the information.

3.5 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 should widen the scope of the planned review of affordability of essential services to include a review of the existing USO.

3.6 Metering & Billing

This year Ofcom has started the review of the Metering and Billing Direction. We believe this review should lead to a less prescriptive approach. In particular, we believe that General Condition 11.1 and strong commercial drivers are together sufficient to ensure accurate bills and customer protection, and that the Direction is not required.

We therefore urge Ofcom to conclude this review and eliminate any unnecessary regulatory burdens, including the Direction itself. If Ofcom concludes that a Direction is still required, the focus should be on retail voice services for consumers and smaller business customers. Other services and customer groups should be removed from the scope of the Direction. For example services provided to large business customers are often bespoke, with high levels of volume and revenue, and the obligations that apply to consumers and small businesses are not appropriate.

Rather than 'one size fits all' measures like those in the current Direction, Ofcom should instead adopt a more principle-based approach that accommodates the needs of all types of CP and customer segments.