

## CWU SUBMISSION TO OFCOM'S ANNUAL PLAN 2014/15

The CWU is the largest union in the communications sector in the UK, representing over 200,000 employees in the postal, telecommunications and financial services industries.

The CWU welcomes the opportunity to comment on Ofcom's overall strategic approaches and purposes, the issues and areas that should form Ofcom's priorities or major work areas in 2014/15, and specific areas for deregulation or simplification ahead of the Draft Annual Plan consultation being published in December 2013.

### Ofcom's strategy and priorities – Telecommunications and broadcast sector

#### Effective competition and informed choice

##### A) Supply-side activities

1. Investment - The CWU supports Ofcom's continued focus on ensuring effective investment in current and superfast broadband. The government has had to revise its 2015 targets due to lack of investment and delays in the rollout of Broadband Delivery UK (BDUK) funding. The DCMS revised target is now to 'secure delivery by December 2016' of superfast broadband coverage at a minimum of 24Mbps to 90% of premises. The DCMS projects that the Programme will reach 4.6 million premises (92%) in total, completing its rollout in March 2017.<sup>1</sup> This follows on from the London School of Economics report<sup>2</sup> last year which suggested that the superfast broadband target set by the government was unlikely to be achieved, following a £1.1 billion funding shortfall. It argued that the government's broadband programme needs £2.4 billion to meet the targets but has only £1.3 billion in public funding, meaning that private investors will be expected to make up the difference. *"This paper shows that serious investment in broadband can deliver serious social and economic benefits for the UK,"* said Morag Lucey, Global SVP Marketing, Convergys Information Management. *"Yet, the current funding gap of £1.1 billion means that we're likely to remain uncompetitive in Europe, let alone the rest of the world, until we find some way of bridging this infrastructure shortfall"*<sup>3</sup>.
2. The UK Government announced in June 2013 in a HM Treasury report 'Investing in Britain's Future'<sup>4</sup> a £250 million spending commitment on superfast broadband investment between the years 2015 to 2017. However this money is part of the £300 million investment in superfast broadband that was announced in 2012. The investment shortfall will not only impact negatively upon effective competition in the industry but also upon consumers having the ability to make fully informed choices about broadband services between communications providers. With no indication that public funding levels are likely to increase, despite pressure from numerous stakeholders, it thus falls to Ofcom to try to address the funding gap through appropriate regulatory mechanisms to incentivise and encourage further private investment.
3. Market power - Ofcom has indicated before that where BT holds significant market power (SMP), its competitors will have access to wholesale services delivered over its newer platforms on an equivalent basis to BT's retail arm. The CWU reiterates its opinion that it is important that Ofcom

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<sup>1</sup> 'The Rural Broadband Programme', National Audit Office, 5<sup>th</sup> July 2013, London.

<sup>2</sup> 'Costs and Benefits of Superfast Broadband in the UK', London School of Economics, May 2012, London.

<sup>3</sup> 'UK business set to suffer as targets for fast broadband unlikely to be met', Telepresence & Videoconferencing Insight Newsletter, 19th December 2012, London.

<sup>4</sup> 'Investing in Britain's Future', HM Treasury, June 2013, London.

looks at market dominance and opening up access to wholesale services not only in BT but in other companies where SMP exists within a given geographical area (particularly Virgin Media and especially after the merger with Liberty Global).<sup>5</sup> There should be a requirement for Virgin Media and other communication providers to provide open access to their ducts if competition and choice are not to be restricted. This will help to create cost efficiencies through infrastructure sharing and therefore extend broadband further and at lower cost.

4. Network investment - One of the most important requirements for delivering the level of quality expected by wholesale customers in the fixed voice and broadband markets is the ability to invest sufficiently in the network to ensure it continues to be robust, well maintained and fit for purpose. Therefore incentives must give due regard to appropriate pricing mechanisms to enable adequate network investment for the benefit of all communications providers.
5. Service Standards – The CWU remains concerned that there is also a need for transparency of maintenance and quality of service standards as BT’s physical infrastructure continues to be opened up to other communications providers. This should also extend to minimum health and safety standards, to ensure the safety of those working on the network, as well as guaranteeing minimum qualification standards for engineering occupations.

## **B) Demand-side Activities**

6. Consumer choice - The CWU has always supported that consumers must be granted the ability to make informed choices in order to ensure an effective and evolving market. The provision of accurate, comprehensive and contemporaneous information concerning broadband speeds is essential if consumers are to be confident in their selections and switching of broadband providers. This will also enable broadband speed comparisons with other countries to ensure that the UK is not falling behind its competitors. This is supported by evidence from Ofcom itself as on 5<sup>th</sup> March 2013 its report *‘The European Broadband Scorecard’*<sup>6</sup> was published which showed, in comparison with how the UK is performing with its main European neighbours – the EU5, that the UK occupies a middle position, number 3, with regard to superfast broadband services. However the situation is even starker when compared to the rest of the EU as the UK ranks number 17 out of 27 states. The latest report by the web content firm *Akamai*<sup>7</sup> on global broadband speed data also reveals that the UK ranks number 18 in the world for speed.
7. The CWU recognises Ofcom’s duty to promote fair and effective competition and, as the Competition Commission has previously concluded, problems with effective competition in the pay TV market need to be monitored and addressed. In this regard the CWU believes that Ofcom should act where Sky unreasonably withholds commercial agreements. As a remedy Ofcom must intervene and direct terms to resolve such matters in the interests of customers in order to facilitate a greater level of competition and improved customer choice.
8. Dispute Resolution - The CWU is still concerned that Ofcom should promote awareness amongst consumers of alternative dispute resolution schemes, and standardise procedures across the industry. This would not only address distress but would also improve the time and resource dedicated to complaints handling. According to Ofcom’s own research there appears to be variation in service standards between communication providers thereby prolonging the resolution of such issues for eight weeks. The publication of complaints data by itself is insufficient to meet consumers’ grievances.

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<sup>5</sup> *‘Liberty Global confirms Virgin Media bid’*, The Financial Times, 6 February 2013.

<sup>6</sup> *‘The European Broadband Scorecard’*, Ofcom, 5<sup>th</sup> March 2013, London.

<sup>7</sup> *‘The State of the Internet, 4<sup>th</sup> Quarter 2012 Report’*, Akamai, 2013, Zurich, Switzerland.

9. Access - In relation to traffic management practices the CWU is concerned that, although the differentiation of services is prioritised through pricing mechanisms, other restrictions, such as slowing of download speeds for video content streaming and for content downloading between users, persist. In addition the CWU is concerned about the impact on traffic management of the sheer proliferation of broadband infrastructure works over a short space of time. As stated before the DCMS has revised its target to 'secure delivery by December 2016' of superfast broadband coverage at a minimum of 24Mbps to 90% of premises, and it projects that the Programme will reach 4.6 million premises (92%) in total, completing its rollout in March 2017.<sup>8</sup> As a consequence there are growing calls for the 2Mbps baseline speed, which is currently the minimum required to access on-demand television via BBC iPlayer, to be modernised to accommodate a 'relative rather than absolute standard of service'<sup>9</sup>. Ofcom has also said that the minimum 2Mbps speed for all needs to evolve over time if it is to remain effective, and that "it may be appropriate to consider increasing the USC target in due course"<sup>10</sup>. There is a real danger that consumption of broadband will be choked because of both the increased number of consumers accessing the network and the larger volume of traffic being generated. Therefore Ofcom should introduce appropriate minimum standards through regulatory enforcement to act against both restrictive practices and traffic overload.
  
10. Switching - The CWU still believes that automatically renewable contracts (ARCs or 'rollovers') to residential consumers act as a barrier to switching. For example mobile customers would prefer to be able to switch from an annual plus contract to a monthly. The original case for ARCs as a return for previous investment has long since faded and its continued existence acts as a restrictive practice. The CWU also supports Ofcom's continued work in reviewing additional charges in contracts for communications services (including non direct debit and early termination charges - ETCs).

### **Securing optimal use of spectrum**

11. The CWU supports continued spectrum clearance in 800 MHz and 2.6 GHz. Spectrum is both crucial to ensure that the UK does not fall behind our economic competitors as they continue to heavily invest public funds in broadband networks, and in extending broadband to the 'final third' where fibre is not deemed to be commercially viable. The development of ever greater spectrum bandwidth will inevitably be required as the demand for mobile data increases from consumers.

### **Promote the opportunity to participate**

12. Coverage - The CWU supports Ofcom's continued commitment to work with government and industry to promote the widespread availability of superfast broadband. According to the last published figures by Ofcom superfast broadband is currently available to 65% of UK homes and businesses, and take up is currently 7%<sup>11</sup>. In April 2013 BT Openreach's Chief Executive Liv Garfield confirmed<sup>12</sup> that its fibre optic roll out had reached some 15 million premises with 99% of connections being via Cabinet network (also contained in BT's published results for the fourth quarter to the year 31<sup>st</sup> March 2013). However the National Audit Office (NAO) found in its report 'The Rural Broadband Programme'<sup>13</sup> that DCMS had revised its projection of completion date for the rural broadband rollout from May 2015 by some 22 months. This delay has largely been due to gaining EU approval under state aid rules. The DCMS revised target is to 'secure delivery by

<sup>8</sup> 'The Rural Broadband Programme', National Audit Office, 5<sup>th</sup> July 2013, London.

<sup>9</sup> 'The Superfast and the Furious, Priorities for the future of UK broadband policy', Policy Exchange, December 2012, London.

<sup>10</sup> 'Ofcom Infrastructure Report 2012 Update', Ofcom, November/December 2012, London.

<sup>11</sup> 'Ofcom Infrastructure Report 2012 Update', Ofcom, November/December 2012, London.

<sup>12</sup> 'BT's fibre network reaches fifteen million premises', BT Press Release, 9<sup>th</sup> April 2013, London.

<sup>13</sup> 'The Rural Broadband Programme', National Audit Office, 5<sup>th</sup> July 2013, London.

December 2016' of superfast broadband coverage at a minimum of 24Mbps to 90% of premises. Against this background, there have been calls from commentators, including the Policy Exchange, to concentrate on extending coverage of good quality broadband and getting people to use it, rather than chasing the fastest speeds.<sup>14</sup> The CWU firmly believes that there needs to be a wider strategy that recognises the intrinsic difficulties of rural areas but that is able to exploit the opportunities afforded through the introduction of new technology. In addition the CWU would continue to encourage Ofcom in adopting further measures to combat mobile not-spots by increasing the coverage obligations on 3G operators. The CWU supports Ofcom's intent to closely monitor market developments and to consider further action in the future. These problems are particularly prevalent in rural and semi-rural areas.

13. Take-up – The CWU firmly believes that Ofcom should place particular emphasis on improving superfast broadband take up. This is an effective way of addressing the UK's broadband needs and stimulating economic growth and job creation in the short term. It is essential to provide opportunities and encouragement to the millions of UK residents who have never been online, and to promote the benefits of faster broadband to all households still using standard broadband connections. In this regard particular attention must be given to developing internet literacy with older people and other vulnerable groups, as internet connection and usage is an equality issue. Greater investment in e-government services including e-health, education and employment could help make the internet attractive and relevant to new groups of people. A major e-literacy campaign remains necessary if older and disabled people in particular are to access the internet.

14. The CWU continues to argue that only a FTTP network will truly realise the full potential of the internet in terms of economic competitiveness, job creation, IT literacy and social connectivity. This has been supported in the House of Lords Select Committee on Communications report when it recommended that:

*"...policy should be ultimately directed towards universal, point-to-point FTTP as this is a technology not only able to accommodate current demand, but at current rates of growth, will be able to accommodate the UK's bandwidth demands for many decades to come...we recommend that the Government should set out an even bolder vision for broadband policy than is currently the case...we believe it is incumbent on the Government to ensure that policy and regulation in the interim guarantee that there is a clear path from any intermediate steps which may be taken to the roll-out of point-to-point FTTP and that, crucially, these steps will not serve to hinder or hold back any future upgrade."*<sup>15</sup>

15. Universality - The CWU supports Ofcom's objective of securing the ongoing delivery and evolution of effective and efficient universal services in telecoms. The CWU believes that the time is right now for a statutory Universal Service Obligation (USO) for broadband, given the importance of broadband for economic and social participation, and the difficulty for households in rural areas to access decent broadband speeds. The CWU requests that Ofcom takes a lead in supporting this objective and promoting it within government. This issue was supported in last year's House of Lords Communication Committee's important report, recommending that:

*"...we do believe that broadcast media will increasingly come to be delivered via the internet. As and when this happens...the argument for recommending a USO becomes stronger. The Government should begin now to give this active consideration."*<sup>16</sup>

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<sup>14</sup> 'The Superfast and the Furious, Priorities for the future of UK broadband policy', Policy Exchange, December 2012.

<sup>15</sup> 'Broadband for all – an alternative vision', House of Lords Select Committee on Communications, July 2012.

<sup>16</sup> *ibid*

## **Protecting consumers from harm**

16. The CWU fully supports Ofcom's work in relation to the protection of consumers from harm particularly with ensuring efficient and effective programme standards enforcement primarily in relation to the European debates on the protection of minors. The CWU requests Ofcom to consider the introduction of statutory minimum standards to maintain neutrality and internet openness. Given the increase in managed services it is no longer sufficient to leave such matters to the 'best efforts' of operators and providers themselves. In addition communication providers and internet service providers should provide more security at the point of access. This will help to prevent not just access to unsuitable sites but also to prevent the flood of spam mail with links to inappropriate sites or containing virus/worms. The CWU would reiterate its request that Ofcom take more action at all levels - national, corporate, communication provider and consumer - on protection from the danger of cyber crime. In other national jurisdictions action is being taken to protect consumers, whether individuals or organisations, from cyber crime. For example, the USA has introduced stronger cyber security measures as a number of unprecedented cyber attacks against financial institutions and energy companies have prompted many large corporations to rethink the need for government intervention. This involves information sharing and co-operation between the private sector and government and a voluntary set of standards for companies.<sup>17</sup>
17. The CWU considers that Ofcom's performance against targets should not only be measured at the year-end but reported progressively each month and subject to annual review. As a matter of principal as much information as possible relating to quality of service should be made publicly available.

## **Supporting continued audience confidence in broadcasting content**

18. The CWU supports Ofcom's commitment to providing customers with assurances on standards particularly in investigating breaches of broadcast licences, investigating fairness and privacy complaints and considering statutory sanctions. The CWU repeats its request that Ofcom should investigate means of incentivising investment in quality public service content to guarantee market standards for new entrants in serving the interests of citizens, consumers and stakeholders alike.

## **Contributing to public policy defined by Parliament**

19. The CWU supports Ofcom's continuing role in providing advice to the government and Parliament during 2014/15 particularly the implementation of the online copyright infringement provisions of the Digital Economy Act 2010 (DEA), especially the creation of a code, a copyright infringement tariff structure and an independent appeals body. In addition the CWU supports Ofcom's continued duties in regard to media plurality and its on-going role in relation to the implementation of recommendations arising from Parliament's consideration of the Leveson Inquiry report.
20. The CWU also believes that in order to advance the interests of citizens and consumers with regards to digital inclusion in a digital society, a statutory USO for broadband should be implemented. Where this is not achievable by market forces or public funding, a universal service fund should be created and funded by all infrastructure providers and internet service providers. We would like to see Ofcom to promote a USO for broadband on this basis and lead on it with Parliament.

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<sup>17</sup> '*Obama acts to toughen computer security*', The Financial Times, 3<sup>rd</sup> February 2013.

## Ofcom's strategy and priorities – Postal services

### End-to-end competition

21. As Ofcom is already aware, the CWU has serious concerns about the threat of end-to-end competition to the postal service. We believe Ofcom's 'wait and see' approach to entry in the end-to-end delivery market risks repeating the mistakes of the Postcomm era. The CWU consistently raised concerns with Postcomm regarding their regulatory approach to downstream access and it is now widely acknowledged that their inaction contributed to the very serious deterioration in Royal Mail's finances before action was eventually taken. We believe that action must be taken now to protect the universal service from cherry-picking of the most profitable delivery routes that help to subsidise Royal Mail postal services in other more costly, predominately rural, areas across the UK.
22. Following TNT's end-to-end delivery trial in West London that began in April 2012, the company recently expanded its reach to South West London and announced plans to begin operations in Greater Manchester in November. TNT plans to open 11 delivery units in Manchester, Trafford, Salford, Wigan and Bury which will enable the company to deliver to all households and businesses within the M postcode. Evidence from CWU's members in the trial areas of London is that postal volumes at Royal Mail have been materially affected in these areas and a similar effect will likely be found in Manchester. Loss of revenues on the scale TNT is working towards would have very serious consequences for Royal Mail, particularly when the loss of TNT's downstream access volumes is factored in.
23. TNT has a 5 year plan to cover over 42% of total UK addresses by 2017.<sup>18</sup> based on two to three delivery days per week in profitable city locations and the employment of staff on zero hour contracts for less than the living wage. By 2017 the company plans to be delivering to 8.5% of the total UK area<sup>19</sup> and to employ approximately 20,000 postmen and women.<sup>20</sup> The company is able to win business because it can choose where, when and what to deliver, without any quality of service or performance standards and by undercutting the jobs, pay and conditions of postal workers across the UK. This model of competition means cherry picking the most profitable parts of Royal Mail's business and cutting costs at the expense of decent jobs.
24. Although Ofcom's statement on end-to-end competition in March 2013 determined regulatory action was not necessary at the time, TNT's rapid expansion and the risks to Royal Mail's business identified in the recently published prospectus ahead of the company's flotation on the stock exchange should prompt Ofcom to think again. The section on business risks in the Royal Mail prospectus supports the CWU's view that unchecked end-to-end competition from companies such as TNT is a threat, stating:

*"The risks to maintaining the profitability of the Royal Mail Core Network are likely to increase with increased competition, and may do so significantly, particularly if competitors are permitted to target only more profitable, higher-density delivery areas and/or to deliver fewer days a week than the Group, leaving the Group (through RMG) with the continued obligation, as the UK's designated universal postal service provider, to deliver in less profitable, lower density areas of the UK six days a week."*<sup>21</sup>

25. The prospectus also says, "The impact of increased "end to end" competition on the Group's financial position and prospects would be significantly greater than that of increased network

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<sup>18</sup> TNT presentation to Marketforce's 12 Annual Conference, 'The Future of UK Postal Services', 30 September 2013.

<sup>19</sup> Ibid.

<sup>20</sup> <http://postandparcel.info/48614/news/companies/tnt-post-uk-hope-to-create-20000-jobs-over-five-years/>

<sup>21</sup> Royal Mail plc Prospectus, pg 17 : <https://royalmailshares.service.gov.uk/media/docs/Prospectus.pdf>

access.”<sup>22</sup> The CWU’s concerns about the impact of unchecked end-to-end competition on Royal Mail’s future deliveries to costly rural areas are also reflected in the prospectus, with the document warning that, “The Group may not be able to offset increased costs associated with deliveries in less profitable areas through deliveries in more profitable areas.”<sup>23</sup>

26. As we argued in our response to Ofcom’s 2013/14 Annual Plan, another issue with cherry picking is that entrants to the market are able to undercut Royal Mail without necessarily being more economically efficient. For example, a competitor might have higher unit costs than Royal Mail in the urban area in which they operate, but because Royal Mail’s prices need to cover the cross subsidy to more expensive delivery areas, the competitor can charge less. This type of entry does not yield any net utility improvement, and therefore benefits only the competitor company, not consumers.
27. The CWU believes regulatory intervention is necessary now to impose service conditions on end-to-end competitors to Royal Mail. As a first step Ofcom should impose General Universal Service Conditions (GUSCs) on competitors like TNT which provide services which fall within the scope of the universal service. GUSCs do not require legislative change or Ministerial approval and provide the best option for intervention on cherry-picking in the short term. Requiring Royal Mail’s competitors to deliver to a minimum area of geographic coverage for a specified number of delivery days and to a representative proportion of the population would go some way to ensuring competition was on fairer terms. We believe developing such conditions should be a priority for Ofcom’s 2014/15 work under the banner of securing the provision of the universal postal service.
28. We also repeat our call for Ofcom to signal to Ministers that it would welcome direction to begin work on a Universal Service Compensation Fund through which rival postal operators compensate Royal Mail for the costs of providing the universal service. Similar support funds are being established in a number of European countries to ensure the long term viability of the universal service and, given the lengthy process involved and the long overdue review of the net cost of universal service provision, we believe this work should form part of the regulator’s work in 2014/15.
29. Without regulatory intervention, unfair competition will threaten Royal Mail’s financial viability. Loss of market share in low cost delivery operations increases Royal Mail’s average cost. Both the Royal Mail prospectus and the company’s Chief Executive have now indicated that following privatisation stamp prices will rise even further for those products without a price cap imposed by the regulator.<sup>24</sup> Raising prices to reflect the increase in the average cost will reduce demand for Royal Mail’s services, resulting in falling marginal returns to price increases. This cycle of unsustainable cost and price increases – the ‘graveyard spiral’ – has long been identified as a serious risk to universal service providers.<sup>25</sup> Ofcom should therefore act now, before it is too late, to ensure end-to-end competition does not threaten the universal service it is Ofcom’s primary duty to protect.

### **Royal Mail efficiency review**

30. Ofcom’s draft annual plan for 2013/14 indicated it would be commencing work looking at performance and efficiency at Royal Mail. Previously the CWU argued it was not adequate for Royal Mail’s business plan to be used as a baseline for measuring efficiency and so we welcomed this piece of work. However, it must include an independent review into Royal Mail’s efficiency undertaken in

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> <http://news.sky.com/story/1154822/royal-mail-ceo-paves-way-for-stamp-price-rise>

<sup>25</sup> Panzar, John. 2002. Reconciling Competition, Downstream Access, and Universal Service in Postal Markets; Crew, Michael & Kleindorfer, Paul. 2002. Balancing Access and the Universal Service Obligation.

consultation with relevant stakeholders if a proper discussion on performance and efficiency is to take place.

31. Royal Mail's employees provide an efficient service to 29 million homes 6 days per week, whilst adapting to new technology and working practices and dealing with increasing workloads. Too often the debate on efficiency at Royal Mail has been muddled, with the implication that employees are not working well enough and that Royal Mail compares unfavourably to its competitors. We would like to see a fair discussion about Royal Mail's performance and relative efficiency and await further details from the regulator as to how work in this area is progressing. The CWU is particularly concerned that Ofcom does not promote competition on the basis of erosion in employee terms and conditions in line with business models such as TNT's.

### **Future of the universal postal service**

32. The CWU continues to have strong concerns about the future of the universal postal service with Royal Mail in the private sector. A private company's primary interest lies with delivering value to the shareholder and requires Ofcom to take a far stronger stance in defending the universal postal service for the public.
33. Only the bare minimum aspects of the universal service are enshrined in law through the Postal Services Act 2011, with Ofcom holding the power to change many other aspects of the universal service. It is highly likely that a privately owned Royal Mail, under pressure to generate a significant financial return for shareholders, will want to cut the burden of the universal service and will in the future lobby for such changes. The company has already indicated that it will pursue a 'progressive' dividend policy for its shareholders<sup>26</sup> and Ofcom will likely come under pressure to alter access requirements or service standards as occurred in the Netherlands after privatisation.<sup>27</sup> Such pressure must be resisted.
34. We were disappointed that Ofcom's 2012 review into postal users' needs focused on reductions in service levels – including cutting delivery days down to 5 days per week, scrapping first class mail and reducing quality of service standards – rather than protecting current popular standards. We believe that with privatisation now, more than ever, Ofcom needs to stand up for the universal service instead of looking at ways to erode it.

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<sup>26</sup> <http://www.thetimes.co.uk/tto/business/industries/supportservices/article3867714.ece>

<sup>27</sup> <http://postandparcel.info/56186/news/regulation/end-of-monday-delivery-will-have-limited-impact-on-postnl-staff-claims-minister/>