



Fergal Farragher  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

TalkTalk Telecom Group PLC  
11 Evesham Street  
London  
W11 4AR

T 020 3417 1000  
F 020 3417 1001  
W [talktalk.co.uk](http://talktalk.co.uk)

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### TalkTalk response to Ofcom's Draft Annual Plan 2012/13 consultation

Dear Fergal

This is TalkTalk's response to Ofcom's Draft Annual Plan 2012/13 consultation. TalkTalk Group provides broadband to over 4 million residential and business customers under the TalkTalk, AOL and TalkTalk Business brands. We are the UK's biggest local loop unbundler, operate the UK's largest next generation network (NGN) and are Openreach's largest wholesale customer.

Broadly we agree with much of Ofcom's priorities and focus. However, we consider that there are some notable omissions or gaps in Ofcom's plan (though these may be accidental oversight and/or are planned but are not highlighted). The first and most important is around superfast broadband and the need to support effective retail competition which appears to have little focus in the plan. Our other two concerns around copper based competition and Ofcom's approach though important are less critical than superfast broadband.

The first and most important areas regards superfast broadband. It is important to encourage efficient investment / competition in NGA networks themselves. However, in the short to medium term it is probably more important to ensure efficient investment / competition in downstream markets i.e. in provision of retail services by different ISPs based on Openreach's GEA/VULA wholesale products. However, Ofcom seems to have little or no focus on this area (for example, there is no objective around retail competition – instead Ofcom's seems to focus on the final third). Effective retail competition is an area that will require significant focus and effort by Ofcom in 2012/13 (and indeed probably for many years thereafter).

Currently, the market for superfast broadband services is stifled since BT Retail dominates the provision of services on Openreach's NGA network. BT Retail provide about 99% of all connections on Openreach's fibre network. In contrast, on Openreach's copper network BT Retail provide less than 40%. The lack of competition is

perhaps not surprising given (a) that BT's GEA/VULA product provides very little opportunity for differentiation and innovation by ISPs and (b) there is insufficient margin between the VULA price and the retail price. We consider it essential that Ofcom's key focus and priority in the areas of superfast broadband is on achieving effective downstream competition.

The second area is that of copper based competition. Over 98% of residential and small businesses line, calls and/or broadband services are based today on the traditional copper network where competing service providers rely on BT's LLU and WLR wholesale products. Though competition is relatively effective today there is clear room for improvement as well as threats to the competition we enjoy today. For example, Openreach will continue to seek to exploit its market power through, for example, excessive pricing where there are no charge controls and Openreach's service levels remain poor. Furthermore, towards the end of 2012/13 Ofcom will need to begin work on the WLA, WAEL and WBA market reviews as well as key charge controls in time for the next period (starting on 1 April 2014). Ofcom must not lose sight of the central role of copper based competition in delivering consumer benefits today and in the future – accordingly it must (pro)actively nurture competition and ensure that its interventions are decisive and timely.

Our last area of comment regards Ofcom's approach. In the discussion of Ofcom's approach to regulation the document highlights the need to 'act quickly and decisively' (§7.3). In the last 12 months there has been several examples where Ofcom has not met its own objective in this area. For example: the LLU/WLR Charge Control (over 12 months late leaving a lacuna that cost customers £10s millions); the Ethernet dispute (6 months past the 4 month deadline); switching project (current phase started over 2½ years ago); BCMR / charge controls may not be ready before current control ends; and, Openreach SLGs (intervention months late). There are also areas where we think intervention is necessary but Ofcom is not acting. It is notable that in almost every case competition and consumers have suffered as a result of the delay.

We think Ofcom should consider ways in which it might act more 'quickly and decisively'. We imagine that one of the major reasons for delay is incumbents hindering Ofcom's work (reflecting that it is in their interests that decisions are late). Ofcom might consider ways in which to counter these unhelpful tactics (which are ultimately very harmful to consumers). For instance, it might be able to use its information gathering and enforcement powers to punish intentional delay and/or create other incentives for incumbents to be responsive. Another approach to speeding its work and/or not being late is (in the case of market reviews and charge controls) to start some elements of the work much earlier for instance regarding cost allocations rules. The regulatory accounting / cost orientation project is one opportunity to tackle some of these issues in advance.

Please do contact me if you have any questions.

Yours sincerely

Andrew Heaney  
Executive Director, Strategy and Regulation