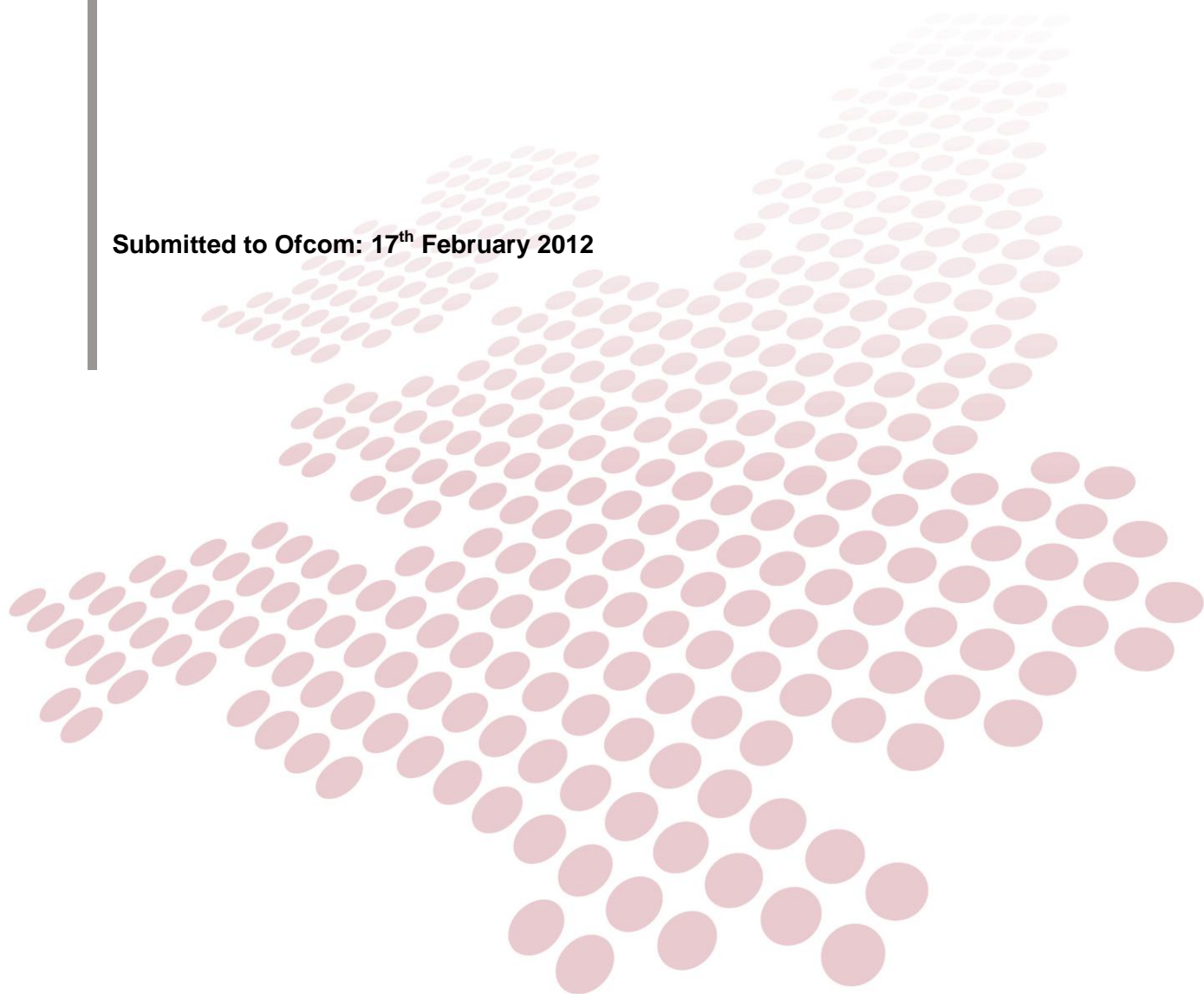UKCTA

Draft Annual Plan 2012/13

UKCTA Response to Ofcom

Submitted to Ofcom: 17th February 2012

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.com.

We welcome the opportunity to comment on Ofcom's draft Annual Plan. The plan provides a clear view of Ofcom's priorities and enables stakeholders to plan more effectively and engage proactively on specific issues. However, there are some key areas on which UKCTA would welcome focus and a commitment from Ofcom to undertake work to address. We also have some more general comments on the draft plan which are set out below.

Investigations

UKCTA members are aware that Ofcom is undertaking a number of own-initiative investigations. We believe that it would be helpful to detail these in the Annual Plan to provide stakeholders with a full view of the issues on which they may be required to engage. In particular we are concerned about ongoing own-initiative investigations into compliance with General Conditions – what investigations are being undertaken, what is included within those investigations and timescales.

Timeliness of Ofcom decision-making

In general terms, we are concerned that over the past year delays have been experienced in the completion of Ofcom's work in a number of areas. This includes work on charge controls (LLU/WLR and BCMR), disputes (most notably the PPC and ethernet disputes), switching and Openreach SLGs. These areas are of fundamental concern to CPs. Delays can have the serious impact of perpetuating ongoing competition problems and creating a lack of regulatory certainty, particularly regarding future price levels. Additionally they can result in considerable resource pressures being placed on stakeholders because of a reduced consultation period which allows some catch-up on Ofcom's timetable and often a number of consultations being published in quick succession.

UKCTA members would like to see a commitment from Ofcom within the Annual Plan that sufficient management resources and budget will be available to ensure competition issues are addressed in a timely manner, recognising the need for a full and rigorous consideration of issues by both Ofcom and stakeholders.

Number Portability

UKCTA members are frustrated with elements of the wholesale regime for fixed line number portability. Whilst we have separately responded to Ofcom on the subject of Switching, which we note is included as a priority in the Draft Annual Plan and do not wish to see this interfered with or delayed, we would urge Ofcom to address some of the immediate failings in the wholesale regime whilst a number of communications providers continue to work on a set of Industry lead solutions to these problems.

Review of Openreach SLA Regime

We note the emphasis on addressing matters considered to inflict consumer harm, within Ofcom's plan of work. Generally it is the view of UKCTA members that consumer interests are best served through a vibrant, effectively competitive market and would urge Ofcom to focus its efforts primarily on enabling and overseeing the proper working of competition. Overly prescriptive interventions and micro managing providers' processes are likely to lead to an overburdened, and unresponsive, industry stifled of innovation – to the detriment of consumers.

Accordingly, it is surprising therefore that Ofcom has chosen to ignore the on-going, systemic poor quality of service provided by Openreach which affects nearly every CP and their customers. A number of our members for over a year have been bringing the matter of poor service in both provisioning and assurance to Ofcom's attention and seeking its engagement to address this significant consumer impacting matter.

As a result of the very poor service experienced during much of 2010 and first half of 2011, Ofcom tasked the OTA to broker a voluntary service level agreement (SLA) between Openreach and the industry. However, this new SLA addresses only a subset of Openreach's products and is considered by many to be insufficient an incentive on Openreach to deliver the necessary and sustained improvements needed.

UKCTA considers a comprehensive review of the SLA regime across all regulated products is needed. The likely improvements that could be achieved would deliver far more benefits to consumers than some of the other consumer focused programs presently occupying Ofcom's priorities.

Proportionate Response to Consumer Issues

Industry is facing a substantially heavier compliance burden in relation to consumer issues. We are therefore concerned to ensure that it is not increased further without clear justification that additional sector specific regulation is required. Careful consideration of whether additional obligations are absolutely necessary is vital, together with a reasoned assessment of the proportionality of any proposed requirements. Where there is a social imperative for action, for example the potential requirement to provide access to video relay services, Government must recognise that there is a need to consider the provision of wider funding to support the achievement of its goals.

There also needs to be a consideration of whether existing regulation is effective and necessary and for measurement of this regulation against the achievement of the desired consumer outcomes. Where it is not necessary or not achieving the specified aims, it can and should be removed. For example, Ofcom has said in the past that it will review the General Conditions to check that they are still fit for purpose, but it seems that this work stream is regularly de-prioritised. We hope that Ofcom will take the opportunity to at least review the effectiveness of GC14 as part of its work to identify and evaluate the conditions in which informational remedies may work, for example (4.23).

Business Interests

UKCTA recognises Ofcom's duties to protect the interest of consumers and works to support many of the initiatives undertaken, however we feel the needs of UK business shouldn't be considered an after-thought, as it is only by having sustainable competition in the supply of communications services that the long term consumer interest can be served. The current strong economic headwinds make this the ideal time for Ofcom to focus on becoming a business enabler, helping UK business by promoting choice and innovation. Initiatives like the BCMR are welcome and focused at the market level, UKCTA would now like to see Ofcom take a more strategic role in trying to promote the interests of UK business, looking at how it call help businesses face up to the challenges before them by harnessing communication technology and choice to open up new markets and opportunities.

Review of the Undertakings to Maintain Effective Competition

We are at the beginning of another shift of the plates in the telecommunications industry: the transition from copper to fibre. The last major strategic intervention by Ofcom was in 2005 following the Strategic Review when Openreach was created and Ofcom accepted Undertakings from BT in lieu of a reference to the Competition Commission.

Since 2005 BT's product set has evolved and countless exemptions to the requirement for Equivalence have been granted by Ofcom. The effect has been a dilution of the effectiveness of the Undertakings and a re-emergence of competitive problems. As BT undertakes widespread deployment of fibre to the cabinet and starts to roll out fibre to the premises in some areas, UKCTA believes it is time for a review of the Undertakings in the context of the emergence of NGA and the wholesale products needed to support competition in this area. For example, for UKCTA members using the WLR active wholesale product, there is concern that there are no BT plans or regulatory requirements for a follow-on active wholesale voice product for use in areas where fibre extends to the premises (FTTP areas).

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