

BBC RESPONSE TO OFCOM'S DRAFT ANNUAL PLAN 2011/12

The BBC welcomes the opportunity to participate in the consultation on Ofcom's Draft Annual Plan for 2011/12. We have responded here to certain sections of the Plan. However, the response is not exhaustive and we will continue to input into Ofcom work as appropriate.

Strategic Purpose 3: Help communications markets work for consumers**Broadband market**

We welcome Ofcom's 2011/12 objectives relating to improving the retail broadband market, specifically to:

- Ensure Communications Providers deliver clear information so that broadband consumers can make informed choices, and
- Develop and implement policies that will improve the ease of switching between Communications Providers for consumers

The BBC believes that these objectives are of utmost importance to the healthy functioning of the UK communications sector, and their delivery will require significant effort from Ofcom and industry.

We welcome Ofcom's proposed consultation on switching in summer 2011, and hope this will provide meaningful changes which empower consumers to quickly and efficiently switch communications provider. This is particularly important in the context of traffic management, so that users can easily switch broadband provider if they are unhappy with the traffic management techniques being used by their network operator. The BBC urges Ofcom to consider the implications of increasing consolidation in the broadband retail market, which is resulting in vertically integrated operators having increasing market share. In our view, this could create the motive, opportunity and means for discriminatory behaviour which stifles innovation and risks consumer harm.

Switching

Ofcom recognises that, for a market to remain competitive there needs to be a certain amount of consumer activity in terms of switching and/or monitoring markets, and being prepared to switch¹. Ofcom's own research shows that consumer switching of broadband supplier is very low and declining year on year. In cases where there are significant switching costs or barriers, transparency as to the nature of traffic management practices might not be sufficient. For example, some households – such as those in rural

¹ Ofcom Consumer Experience Report 2009

areas – have restricted choice of provider or technology type. Further, as we set out in our response to Ofcom’s discussion document on ‘net neutrality and traffic management (Sept 10)’, it is important to consider the potential scenarios where discriminatory behaviour may emerge but which would not be constrained by consumer switching.

Ofcom’s 2009 research showed that a quarter of households found it difficult to switch broadband and bundled services, despite an increase in the perceived ease of comparing the cost of bundles. The perceived hassle of the switching process and, increasingly, the threat of additional charges were some of the reasons put forward for not switching, but there are a number of other cited barriers to switching – including loss of email address, no perceived financial gain, an inability to understand complex technical information, lack of service availability, and restrictive terms and conditions (i.e. being tied into a contract).

Consumers with bundles are less likely to switch provider than those with single services. Just 3% of those with a bundle switched their whole package in the year to Q1 2010, compared to 11% of those with stand-alone fixed broadband, 6% with stand-alone fixed voice and 3% with stand-alone pay-TV. The take-up of bundled services is increasing, as Ofcom’s research shows below, which suggests that switching of supplier is likely to decrease if current trends continue. Consolidation among operators in the market – especially vertical integration among content providers and network operators – further exacerbates this trend.

The low levels of switching of broadband supplier are, in the BBC’s view, indicative of a market that it is insufficiently competitive. Compared to other utilities, switching of broadband is also low, as below. If this is the case, then discrimination against rival content, applications and service providers by ISPs could lead to consumer detriment – even if no single ISP actually dominates the market.

We welcome Ofcom’s recognition that improving consumer transparency is a means of enabling switching. The current information available to consumers is not satisfactory. Strengthening transparency requirements with respect to the services ISPs provide to end users should be a priority to allow informed choices. In line with the 2009 EU telecoms regulatory framework, ISPs should be required to provide end users with clear, accurate and relevant information about the quality of service of their offerings and their traffic management practices. Specifically, network operators should be required to regularly provide end users with clear, precise and relevant information on traffic management that is comparable between operators, including:

- a thorough and meaningful description of traffic management practices
- an explanation of how and why traffic management is used (if it is)
- illustrations about how traffic management can affect a user’s internet experience for different types of internet services

- details about changes made to existing traffic management practices
- information on usage caps and costs of exceeding that usage cap
- information about options for upgrading, and
- links to Ofcom accredited consumer information and price comparison websites.

The BBC is developing its own tool to improve transparency for consumers, which should be available shortly. We would like to see Ofcom use its new powers to ensure ISPs provide the necessary information to allow informed decisions by consumers and encourage industry-led initiatives to improve transparency linked, for example, to price comparison and switching sites.

We urge that any new provisions should apply to both fixed and mobile networks, and that co- or self-regulatory schemes must involve representatives from the entire value chain and consumer groups, to ensure all interests are represented.

Strategic Purpose 5: Contribute to and implement public policy defined by Parliament

Ofcom's principles of international engagement and strategy concerning the duties assigned under the International Matters section of the 2003 Communications Act (section 22) are of great importance to the BBC. Alongside its primary focus on UK licence fee payers, the BBC has a substantial international role. The BBC's Global News division attracts a global audience of 241 million people to its international television and radio services, and its international-facing news websites and mobile services. We currently operate 32 language and regional services, including English. The division comprises BBC World Service (our international radio station, Arabic and Persian TV services and on-line services), BBC World News (our international news and information English television channel) and BBC Monitoring (open source monitoring of TV, radio, web and print media around the world). BBC World Service is currently funded by Parliamentary Grant-in-Aid from the Foreign and Commonwealth Office and transfers to the Licence Fee from 2014/15. Although editorial control rests entirely with the BBC, the relationship between BBC World Service and the Foreign Secretary (extensively detailed in The Agreement which sits alongside the Royal Charter) enables the BBC to "plan and prepare the provision of the World Service in the public interest". BBC World Service plays an important role in UK public diplomacy and to support this, a strong, engaged and influential UK is needed at the ITU and other international technical regulatory fora. The BBC can and will continue to represent its own interests directly where possible. However, we also rely on Ofcom to co-ordinate the UK position where stakeholders have differing interests or to make us aware of developments in other fora which may have an impact on our operations.

The BBC welcomes the reference to international engagement in paragraph 6.24 of the Draft Annual Plan 2011/12 (Develop a stable international framework to support our spectrum agenda) and its visibility as a major work area under Strategic Purpose 5 “Contribute to and implement public policy defined by Parliament” in Section 6 of the Draft Annual Plan 2011/12 (6.1). The detail of the work laid out in paragraphs 6.52 to 6.58 is also welcome – the continued engagement with European bodies is important for both the BBC’s domestic and international operations.

In the context of our international operations, however, the BBC has some concerns that work may have become too narrowly focussed on engagement in Europe and objectives solely driven by national spectrum concerns. Given Ofcom’s reduced funding and proposals to meet this challenge by “reducing expenditure by achieving greater strategic focus” (paragraph 4.4), can Ofcom make assurances that activity in Europe will not be prioritised at the expense of work with other regional bodies or the ITU?

The key question with respect to paragraph 6.24 is which international fora Ofcom considers to be “relevant”. The BBC suggests that the following points are important to consider when making this assessment:

- Participation in international fora is not only necessary to coordinate frequencies and underpin the UK awards programme. Coordination of UK positions on other spectrum issues in consultation with stakeholders (particularly those that use spectrum internationally) is also necessary and requires resource and activity for meetings in addition to those preparing for WRCs or doing regular coordination.
- Activity at ITU Study Groups and CEPT Project Teams through knowledgeable and experienced UK technical engagement ensures the protection of UK interests internationally. Although stakeholders offer support through specific expertise, it is only appropriate that Ofcom oversees developments in all sectors and regulatory fora given its responsibilities under Communications Act 2003.
- Although participation in European preparations for WRC-12 is key, the experience of WRC-07 (and Ofcom's own assessment at the time) was that UK co-ordination with other regional groups and administrations outside Europe was increasingly important if outcomes were to benefit the UK.

Technical Studies

Technical studies carried out by Ofcom complement and support technical studies in specific areas of expertise by stakeholders like the BBC. Ofcom studies are very important in assessing the benefits of new technologies and identifying ways in which they might be introduced without adverse impact to existing services. While recognising the understandable budgetary constraints Ofcom faces, we believe there is a strong case not to reprioritise technical studies. The BBC is concerned that the “lower resource base” and

“re-focussing” of these technical studies (paragraph 4.10) will not improve the way Ofcom works as stated, but will result in less rigorous processes being employed when considering opening up spectrum for new uses and may lead to interference problems in the future which are difficult to resolve.

Digital Economy Act 2010– Implementation

Paragraph 5.62 of the Draft Annual Plan states:

“In preparing for Ofcom’s reporting duties, we will look to engage with stakeholders about how we can identify and capture relevant information, including that which relates to the development and promotion of lawful services, initiatives to raise public awareness of copyright and online infringement, and enforcement actions taken by copyright owners against alleged infringers. We are required to report quarterly on estimated levels of online copyright infringement, with the first report covering the first full quarter after implementation. Separately, we will report annually on a broader range of measures, as required by the Act.”

The BBC would request that Ofcom provide more clarity about how this engagement with stakeholders will be undertaken: for example, is Ofcom proposing to consult on this issue? If not, the BBC believes it will be important for Ofcom to capture the views of a wide range of stakeholders through some other mechanism (for example, open meetings) in order that the voices of broadcasters and other stakeholders are heard. More generally, it will be important that Ofcom’s arrangements for collecting information about steps taken by copyright owners to provide legal alternatives to pirated content and to promote copyright awareness and education are reasonable and proportionate and do not impose unnecessary burdens on industry.