



BT's response to Ofcom's Draft Annual Plan 2011/12 consultation

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Introduction

1. The Ofcom Annual Plan remains 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.
2. The communications market continues to rapidly evolve, consolidate and converge. Key challenges include promoting competition and investment in the delivery of superfast broadband, an objective that BT has been pursuing backed by significant investments. Regulation must keep pace with new technological and market developments and ensure that any new bottlenecks, for example, in relation to TV content and spectrum, are adequately addressed and that any existing regulation no longer needed is removed.
3. We broadly support the priorities set out in Ofcom's draft annual plan and believe it generally identifies and prioritises the key programmes for the year ahead. We have made a number of comments and suggestions.

Ofcom's general approach

4. As noted above, the Ofcom plan is an important document not only for setting out the detailed work programme but also for understanding Ofcom's strategic direction and how this shapes the forward-looking regulatory agenda. We had previously understood that Ofcom had intended to consult on a review of its strategic framework and approach but this review now appears to have been carried out internally to arrive at the strategic priorities set out in the draft plan. BT would have preferred that Ofcom had consulted on this review to allow stakeholders to input their views. Whilst we believe that the strategic priorities are reasonable, the outcomes listed are essentially tactical and it would be helpful to have a greater insight into Ofcom's 'vision' of desired outcomes over the medium term.
5. Ofcom has introduced three new criteria for prioritising work, set out in para 3.16 of the draft plan. We understand from the London stakeholder event that these refer only to work being undertaken at government's request but it would be useful if this could be clarified to confirm that this would not rule out Ofcom taking on other work that met Ofcom's wider regulatory principles, for example to minimise regulatory burdens.
6. We note Ofcom's significant objective of reducing costs by 28% over 4 years (with the majority of savings secured in the first year) whilst at the same time maintaining a full programme of work. Ofcom's draft plan sets out the efficiency measures intended to underpin these savings, but makes no mention of any work that has been dropped or postponed. The draft plan also does not make clear the extent to which, if any, future policy work will now be undertaken by government departments rather than by Ofcom. We believe there is a significant risk that resources will be very stretched, particularly as workloads involving complaints, disputes and appeals are uncertain. We believe that Ofcom must remain flexible, with a clear commitment to completing major market reviews on time, ensuring that regulation keeps pace with market developments and that unnecessary regulation is reviewed and removed.
7. At the London stakeholder meeting, the issue of the impact of cost reductions on the industry sectors was raised; we believe Ofcom should publish in the final plan an assessment of where and how the cuts are likely to fall and how they would therefore impact those sectors that directly fund Ofcom's activities.

8. BT notes that the recent restructuring at Ofcom has led to a strengthening of the National Committees due to the recognition of the increased powers of the devolved administrations and the particular challenges in topography and demographics in Scotland and Wales. BT hopes that Ofcom will be as active in the advice and support it gives to the devolved governments as it will be to central government.

9. It would be a significant help to us (and no doubt other stakeholders) if Ofcom were to publish a schedule of key activities in a simplified Gantt chart format or similar. The reality is that dates are flexible and can change at short notice but such a chart, updated periodically with best estimate dates would enable stakeholders to readily understand the broad timings across the range of key Ofcom activities.

Fibre

10. There are a number of key challenges for the sector, promoting competition and investment in the delivery of superfast broadband being perhaps the most significant. Ofcom's plans to support this objective appear to largely involve ensuring that the WLA remedies imposed upon BT are effective. However, we have a major concern that the market could become fragmented as different local NGA networks are deployed. From a competition perspective, a UK-wide market assessment would find that in their respective geographic network footprints, individual smaller operators (as well as existing large players) had significant market power. In this scenario BT believes that competition should develop at service level with all NGA operators providing access to their networks on equivalent non discriminatory basis. A regulatory regime, based on equitable wholesale access to new next generation access networks would be much more appropriate to foster competition and to widen the choice of both consumers and business customers.

11. We also note that Ofcom will have new powers from May 2011 arising from the transposition of the revised EC framework into UK law. This will allow Ofcom to mandate access to CPs' physical infrastructure without regard to an SMP finding. We see this as very important issue for Ofcom to address, not just for BT where we may require access to alternative fibre products and ducts and poles, but also for other CPs who may be seeking access to alternative facilities other than BT's. This is strongly aligned with government views that where viable, infrastructure sharing should be promoted and enabled where it can extend the reach of telecoms networks and contribute to cost savings for investors. We would expect Ofcom to consult on how they will use this new power as soon as practicable following the conclusion of the transposition process.

12. In S5.8 of the draft plan, Ofcom suggests that the Office of the Telecoms Adjudicator (OTA) has a role in ensuring that BT's wholesale NGA products are correctly specified and to resolve issues relating to product design, pricing and delivery. Although they are both mandated remedies from the last WLA market review, VULA and PIA are grouped together as if they raise the same regulatory issues and hence need to be addressed in the same way. In our view this is inappropriate; PIA is primarily about granting access to an existing infrastructure (e.g. duct and poles), whereas VULA is about providing open and equivalent access to BT's new additional and discretionary investment in the network. We strongly believe the approach to these products needs to be distinguished. Openreach are currently working with the OTA in a jointly chaired process looking at PIA product development but the VULA developments are entirely different and driven by a need to develop a proposition that will succeed commercially. The investment risk sits firmly with BT/Openreach and hence the focus has to be on a commercially driven customer engagement programme, enabling efficient network build, operation and product development.

13. A key element of delivering the government's objectives for broadband is the work being undertaken by BDUK in taking forward procurement in non-commercial areas. We would expect to see significant Ofcom engagement with BDUK to ensure a holistic approach is

adopted, including consistency with the NGA regulatory framework. It is somewhat surprising that this is not covered in the draft plan.

Transposition of revised EU Directives/new powers

14. The draft plan refers in several places to implementing new or revised duties following transposition of the revised EU Directives. Given the significance to stakeholders, we would expect Ofcom to consult on a number of these issues such as new responsibilities for network reliability, security and integrity; monitoring Internet quality of service; Internet transparency requirements; imposing infrastructure access on non-SMP operators if appropriate (mentioned above); and collecting data on network infrastructure. It would be helpful if Ofcom could set out its intentions in these areas.

Business customers

15. At the London stakeholder event, the question was asked about the needs of business customers and how they have been included in Ofcom's planning. We have ourselves raised this issue in previous years. In the list of priorities for 2011/12, Ofcom focuses on the interests of consumers. BT fully agrees with the importance of this objective but we believe that Ofcom should also look more closely at business customers, whose interests are very different from consumers. While consumers need to be protected and supported in their relationships with their communication providers, business customers are much better informed about the services and exercise countervailing buying power. Business customers, and particularly large business customers, require very complex, high quality telecom services, with a significant level of personalisation. They generally require bundles of services and push very hard to get lower prices, especially in the current economic climate. Therefore it is of paramount importance that any CPs is able to provide the best possible offers to meet customer requirements without being constrained by unnecessary regulation.

16. In the retail low bandwidth leased lines market, BT has been waiting for deregulation to occur since the Business Connectivity Market Review concluded in 2008. BT is not able to effectively compete and to properly respond to its customers' requirements because the obligations still in place do not allow us to offer bespoke prices, although the services are now agreed to be fully replicable. The regulation not only limits BT's competitiveness in the market concerned, but also impacts the wider market, making it difficult for BT to compete in the market for bundled services, which include leased lines. Given the increasing demand for bundles in the business market, the impact of this restriction falls not only on BT but also on customers, especially in the public sector. We therefore urge Ofcom to conclude the PPC replicability review by issuing a final statement as soon as possible.

17. It appears from the draft plan that Ofcom's international engagement in the coming year will largely focus on its spectrum agenda. While BT considers this an important area, we believe Ofcom should continue to work closely with other regulators and with the EU Commission to help the development of competition for pan-European services through the harmonization of regulation across Europe. Multinational operators, such as BT, continue to find it difficult to offer services to their multinational customers with homogenous terms and conditions across Europe. This lack of a consistent regulation is particularly critical with respect to the underlying economic and technical terms of wholesale access services. It is very important to have a wide range of access services available in each country at cost-based rates in order to provide services to MNCs. BT believes Ofcom has a crucial role to play in the international arena, inside and outside the EU, in order to push this harmonisation through sharing best practice.

Consumers

18. Consumer switching is highlighted as a major priority for Ofcom in the coming year. BT will continue to work with Ofcom and industry to come up with an end to end switching process that optimises the customer experience. We believe the essential features of a new process are that it should: verify the consumer's identity and intention to switch; ensure the customer has advance information on the contractual consequences of a switch; and validate the assets and services to be switched at all levels in the supply chain. A new process must also be capable of working across infrastructures and be future-proofed for new services such as super-fast broadband. In our view, the question of which provider the customer contacts to initiate a switch – i.e. their current or new provider – is a secondary issue.

19. As part of its inclusion work for customers with hearing impairments, Ofcom has indicated (in para 6.29) it will review the existing text relay service, and assess the need for enhanced or additional relay services. We believe that the current Text Relay obligation is inequitable as it extends to include all end-users, requiring BT to provide wholesale access at cost oriented rates. As all CPs have an obligation to allow access to a text relay service, BT's Universal Service obligation in this area should be limited to supply only to our own customers, enabling commercial supply to other CPs. More broadly, we believe the USO needs to be reviewed with particular focus on the obligations for Payphones, Uniform Pricing and Itemised Billing; this in line with developing thinking at EU level.

Mobile services

20. With the increasing demand for mobile services in both the consumer and business markets (see for example, Ofcom Research Document "The Business Consumer Experience" of December 2010), and given the ongoing consolidation in the mobile industry (through mergers, joint ventures and network sharing agreements), BT believes Ofcom should examine whether the current level of competition in the mobile sector is delivering the optimum benefits for the UK's end-users. Many of the changes on both the supply and the demand sides of the mobile services market have taken place since Ofcom last assessed the mobile sector. In particular, the absence of any regulation of the enduring bottleneck of wholesale access to mobile networks may be found to be a material impediment to the innovation and lower prices that greater competition in the sector could bring. As Ofcom found when it examined the fixed sector last decade, regulating the access to a range of wholesale network features can greatly enhance competition to the enormous benefit of consumers and businesses in the UK. We look forward to Ofcom properly addressing this issue as part of their work ahead of the major spectrum auctions covered in the draft plan.

Other key issues

21. We believe that there is a growing need for Ofcom to review the extent of obligations on CPs to open up access to number ranges in the National Number Plan consistent with "any to any" communications principles. BT is currently the only operator with an end to end connectivity obligation and recent experience has shown that competitive drivers have not been sufficient to ensure that other CPs allow open access in a similar manner. Article 28 of the Framework Directive provides an appropriate vehicle for this to happen, requiring all CPs to open access to number ranges across the Community (and therefore, logically, within a Member State) unless there is a good reason for not so doing.

22. We also note that there is no mention of the publication of guidelines on cost orientation which Ofcom have previously indicated were planned for the first half of 2011. This is clearly

a very important issue and we would have expected to see a reference in the draft plan to the status of this work.

23. Finally, while acknowledging considerable activity regarding spectrum in the Ofcom plan, we believe there is a significant omission. In our view it is important to conclude the work which has already taken place in identifying the possibilities for “TV White Spaces”, most recently with the consultation “Implementing Geo-location”. We ask that Ofcom explicitly include the objective of addressing the remaining issues and thus putting in place the licence-exemption regulations necessary to enable efficient and effective use of this important but under-used spectrum resource.