



Ofcom's Proposed Annual Plan 2019/20

BT's response to consultation published on 3 December 2018

8 February 2019

Comments should be addressed to:
BT Group Regulatory Affairs, BT Centre, London EC1A 7AJ
Regulatory.affairs@bt.com

1 Introduction

- 1.1 At BT we pride ourselves in being a leading communications services provider in the UK, selling products and services to consumers, small and medium sized enterprises and the public sector. Our strategy is continuously evolving to ensure that we build on our strengths and to allow us to respond to market opportunities and challenges. Our purpose is as simple as it is ambitious: to use the power of communications to make a better world.
- 1.2 We view Ofcom's Annual Plan as an important document that Communications Providers (CPs) rely upon to plan their activity and resource requirements over the coming year. It is an important step in the process that Ofcom is transparent about its work programme and that it offers stakeholders an opportunity to input before it finalises its plans for the year ahead.
- 1.3 We are supportive of Ofcom's three high-level, long term strategic goals and the key work areas for the next financial year that supports them.
- 1.4 In our response below, we provide high-level views on Ofcom's key work areas for the next financial year, and comment on on-going projects, as well as the wider work plan. In particular, we highlight where we think Ofcom may have overlooked specific areas. We also provide some suggestions on ways of working. We will engage and convey detailed views and relevant evidence on the individual strands of work at the appropriate junctures throughout the year.

2 BT supports Ofcom's key work areas in the proposed Annual Plan

Moving towards universal availability of high quality and secure communication networks

- 2.1 BT supports Ofcom's ambition to promote the right conditions for network investment to deliver universal availability of high quality, secure networks and believe that competition should remain at the heart of Ofcom's approach to delivering for consumers.
- 2.2 BT is at the forefront of investing in full fibre and 5G infrastructure in the UK, doing its part to ensuring UK consumers and businesses can reap the benefits of world class connectivity. In 5G, following trials in London we announced our plan to launch 5G in 16 UK cities in 2019. We will upgrade 1,500 sites to 5G in 2019 with a 'demand-led' strategy for 5G rollout, taking our high capacity network, underpinned by 10G backhaul links, to the busiest parts of the UK's busiest cities. In fixed networks, Openreach is well on track to deliver fibre to 3 million homes by 2020, and is looking to extend this to 10m by the mid-2020 if the conditions are right.
- 2.3 We will continue to work with the Government and Ofcom to help shape a regulatory framework supportive of investment, in particular how to get the balance right between enabling long-term investment on the one hand and achieving low prices for existing services on the other. We also understand Ofcom's desire to unlock infrastructure competition via unrestricted access to Openreach ducts and poles and have signalled our willingness to work with Ofcom to achieve this, provided greater clarity is achieved in a number of areas. These include ensuring that the pricing regime which Ofcom adopts from 2021 secures cost recovery of Openreach's legacy assets; as well as deregulation (and/or increased commercial freedom for Openreach) of services downstream of ducts and poles - where there is evidence of competitive pressure delivering lower prices for end users. In this context, we are looking forward to continuing to engage with Ofcom on what is needed to achieve its objective of supporting long-term investment in fibre networks in the context of its Single Fixed Telecoms Market Review.
- 2.4 We have already expressed our support for Ofcom and the Government's objective to ensure a decent broadband connection for everyone in the UK. We are ready to play our part to deliver this. We welcome Ofcom's recognition that a universal broadband solution can be delivered through a number of different technologies. We can already connect a large majority of the final 5% commercially using a fixed wireless access solution and can combine this with a network build by Openreach in response to customer requests. But we remain concerned with the practicality of some of Ofcom's proposals. In particular, we need Ofcom to set out realistic timeframes for delivery which recognises the reality and difficulties of network build in the most remote areas. As the Broadband Universal Service Obligation (USO) will be uneconomic to deliver, we also need a mechanism by which we can recover the net costs incurred, and a sensible approach to ensure affordability of USO services, without distorting competition elsewhere.

- 2.5 Widespread mobile coverage is important and the outcome of the forthcoming spectrum auction will have a huge impact on delivering this for consumers. Therefore it is essential that Ofcom's coverage obligations for this auction are correctly designed. We welcome the opportunity to input into this process.
- 2.6 Furthermore how coverage is measured, defined and reported to consumers is rightly identified as an area requiring further work. But coverage should not be considered as a binary have or don't have, there are quality differences including an aspect of speed and capacity in the coverage that is made available. We encourage Ofcom to continue to work with industry to further discuss this in relation to 4G and in preparation for 5G network deployments so as to ensure that this information is defined, presented and reported to consumers in a useful and meaningful way.
- 2.7 We place the utmost importance on the security of our network and the critical services which we provide and we build security into all our consumer products and services from the start. We continue to work in close partnership with the Government to keep the UK's citizens safe from cyber-attacks. Through the UK's Active Cyber Defence Programme, we are making changes to the UK's digital infrastructure to make it more secure. We will continue to work with Ofcom on ensuring that regulations around network security remain fit for purpose and we will continue to meet all our existing obligations as well as those implemented under the NIS Directive.
- 2.8 We have announced plans to close the Public Switched Telephone Network (PSTN) in 2025, following the completion of a major programme of transition to an All-IP network. We want to ensure a smooth transition for consumers, our customers and others in industry, and this will require cross-industry collaboration and support from the Government and Ofcom. In this transition, we are conscious of the need to support vulnerable customers who are dependent on their landline and to ensure that providers of special services are prepared. We welcome Ofcom's increased attention and work in this area, as it has an important role to play as a convenor of industry discussions as well as complementing industry communications and awareness raising.

Maintaining high quality broadcast content for audiences

- 2.9 In TV, we have a content aggregation strategy working with a broad range of partners, including the UK Public Service Broadcasters (PSBs) as partners in YouView and global players such as Netflix, Amazon and AMC. We are a major holder of UK sports rights.
- 2.10 We support Ofcom's role in maintaining high standards in UK broadcasting and the proposed work programme on access services, programme standards and monitoring pay TV. We will continue to engage with Ofcom on issues relating to PSB prominence.
- 2.11 We believe that it is important that Ofcom does not regulate broadcasting and PSBs on the basis of platforms, but that it adopts a technology-neutral stance with a real focus on customer experience including a keen eye on how consumer use of content is changing due to Smart TVs, catch-up and streaming services. For this reason, we call on Ofcom and Digital UK to consider how best to future-proof the regulation of Electronic Programme Guides so as to ensure that it is more technology-neutral, grouping Ofcom-licensed channels by genre, rather than by transmission technology.

Protecting consumers from harmful pricing practices

- 2.12 UK consumers benefit from some of the most competitive communications markets in the world - delivering significant choice and value. It is extremely important to BT that our customers are satisfied. We work hard to ensure that our BT, EE and Plusnet brands are ones that our customers place value in. We already engage with a large proportion of our customers – across BT, EE and Plusnet - as they come to the end of their contracts, and have been actively enhancing communications.
- 2.13 It is important customers are empowered to make good choices for themselves. Ofcom has already undertaken major reforms to the switching process for services provided across the Openreach network. Providers are also implementing changes to the switching process for mobile. Interventions to override choice could have unintended consequences in the form of less engagement with the market. For customers to make good choices for themselves, they need as a minimum relevant and timely information about the services they take to hold up against their communications needs. For this reason we are broadly supportive of Ofcom’s end of and out of contract notification proposals and focused on how these proposals can be most relevant to customers and straightforward to implement.
- 2.14 Ofcom has stated that it is looking to ‘protect consumers from harmful pricing practices’. Price differentiation is pro-competitive and has been delivering great benefits for consumers. Therefore, unless remedies are carefully balanced, they could lead to poorer outcomes for consumers.
- 2.15 However we understand that there are some concerns around outcomes for a minority of mobile and broadband customers, particularly those that are vulnerable. We recognise industry’s responsibilities in this area. We have proposed remedies for vulnerable customers when they come to the end of their handset contract, and are engaging with Ofcom’s review of broadband pricing and vulnerable consumers so that they, like everyone else, can take advantage of the benefits competition offers.
- 2.16 Finally we welcome Ofcom’s ambition to work with stakeholders as it considers how to implement smart data as a way to ensure consumers have the right information on availability, speeds and own usage of communications services to make informed decisions about the products and services that best suit their needs. We note the linkage between Ofcom’s work in this area and the Government’s cross-sectoral smart data review.

Engaging during changes to UK legislation

- 2.17 We will continue to engage with Ofcom and the UK Government on plans to transpose relevant European legislation, such as the European Electronics Communications Code (EECC) into UK law and to ensure that regulation in our sector remains clear and effective, with appropriate checks and balances and opportunities for stakeholders to engage in the regulatory process post-Brexit.

Continuing to innovate in our approach to regulation

- 2.18 We acknowledge the increasing debate around regulating harmful content online and are supportive of Ofcom's willingness to contribute to the policy debate and to provide further insights. BT will continue to work closely with the Government and Ofcom, along with industry to ensure that any new regulation in this area is clear, predictable, and proportionate.
- 2.19 We welcome Ofcom's commitment to collaborate with other regulators, including through the UK Regulators Network. We would encourage Ofcom to collaborate with other regulators e.g. FCA and ICO, early-on in project processes where there might be common interests. Early collaboration would help to provide greater clarity for CPs as to which regulator has jurisdiction on issues where there could be overlapping regulatory powers.

3 Comments on Ofcom's detailed work plan 2019/20

Comments on items already in the work plan

- 3.1 We welcome the inclusion of a number of deliverables within the proposed Annual Plan relating to spectrum for mobile broadband, notably the award of 700MHz and 3.6GHz spectrum which we recognise must be a priority. However, one notable omission is the lack of any specific reference to 5G mmWave spectrum at 26GHz. Given Ofcom's previous work on this band via a Call for Inputs and the work being done to promote the identification of the band for 5G/IMT internationally within ITU, CEPT and the EC RSPG, we had expected this to feature on the work programme. The EC Radio Spectrum Committee has drafted a Decision for the band which will require that *"No later than 30 March 2020, Member States shall designate and make available on a non-exclusive basis the 24.25-27.5 GHz frequency band for terrestrial systems capable of providing wireless broadband electronic communications services..."*. We would therefore expect to see explicit reference within the final Annual Plan as to when Ofcom plans to consult on proposals in relation to authorisation of this spectrum band for mobile services and the arrangements for existing services.
- 3.2 Whilst we acknowledge Ofcom's commitment to protect consumers from harmful pricing practices, we would urge Ofcom to consider split contracts (mobile handset finance contracts with separate airtime contracts) as part of this. It would be helpful for industry if Ofcom were to take a forward-looking approach of the market and to the extent it will provide guidance that this is done without delay.
- 3.3 The proposed Annual Plan mentions strengthening the role of the Communication Consumer Panel from April 2019. We would welcome clarification on what this will look like in practice, and ask for the opportunity to formally input to these proposals prior to implementation, through an Ofcom consultation.
- 3.4 Ofcom's proposed work plan includes a Future of Numbering Policy Review. In 2012, Ofcom introduced a pilot scheme of charging for numbers. Ofcom reviewed and consulted on the success of this scheme in 2016, but it has not yet published any conclusions or amended the charging scheme despite the recognition that some of the areas being charged for are no longer at risk. In light of this, we call on Ofcom to suspend the charging scheme, pending the future of numbering policy review. The review should consider the appropriateness of any future charging or other conservation policies given that scarcity of numbers will be one of the considerations in developing any new approach to geographic numbering.
- 3.5 We will continue to engage with Ofcom and industry on the issue of nuisance calls. We understand that Ofcom intends to convene an industry forum to consider potential strategic solutions related to identification and prevention of nuisance calls. We recommend that this should be included as a milestone in the final work plan.
- 3.6 We welcome Ofcom's inclusion of a dedicated consultation on regulatory financial reporting for BT. This will provide a further opportunity to improve the focus and relevance of regulatory financial information available to stakeholders and to make wide ranging changes to reporting obligations in support of developments in the

associated remedies, in particular those relevant to Openreach.

Comments on items missing from the work plan

- 3.7 Ofcom stated in the latest Broadband USO consultation that it will publish a further consultation in the summer that covers USO cost-recovery and funding (this is separate from the USO statement). This seems to have been omitted from the proposed work plan 2019/20. We recommend that it is included in the final work plan.
- 3.8 We are also expecting a consultation as part of Ofcom's Broadband Pricing Review in Q2; and a final statement on end-of-contract notifications and best tariff advice in Q1. However, neither of these consultations are mentioned in the proposed Annual Plan and we would welcome confirmation of whether and when these will take place.
- 3.9 Should the EECC be implemented in full by the end of 2020, Ofcom would be required to complete a review of the Payphones USO by the end of 2021. This has not been reviewed for many years and is well overdue given the developments in technology and changes in consumer behaviour. Furthermore, the USO will affect investment decisions by BT in the run up to the migration to All IP services. We therefore encourage Ofcom to conduct this review as early as possible, ideally during 2019-20 regardless of the implementation status of the EECC.
- 3.10 Ofcom's proposed Annual Plan does not mention the development of the Internet of Things (IoT). IoT services are expected to become more and more prominent over the next few years with the introduction of 5G and emergence of narrowband-IoT. BT and others in industry are currently preparing for this. In particular, many new services will require some form of identifier to be made available. We have raised the issue with Ofcom and hope we can work together to scope the short-term requirements for these identifiers and develop a short-term policy to meet them, whether that is allocating number resource or alternative solutions.
- 3.11 Ofcom could consider its processes for handling broadcasting complaints in the coming year. At present, all complaints about non-BBC TV content go directly to Ofcom. For BBC programmes, complaints are first handled internally by the broadcaster. Only where a complaint from a viewer about a BBC programme cannot be satisfactorily addressed does it get referred to Ofcom. We see many benefits in hearing directly from our customers if they have comments to make about our TV programming. We would therefore welcome Ofcom conducting a review to consider whether or not to extend the broadcaster-first complaints model to all licensees in the future, subject to certain caveats (e.g. that the licensee can evidence a bespoke TV content complaints team who would handle any viewer complaints in a timely and appropriate manner).
- 3.12 As follow up to work on PSB prominence last year, we urge Ofcom to consider reviewing its guidance on EPG listings, enabling content to be displayed by genre groups, rather than by distribution technology. This would provide for a better consumer experience.

4 Working together better

Supporting Ofcom's effectiveness

- 4.1 We would like to reiterate the call made by Cathryn Ross, BT Group Regulatory Affairs Director, in her Beesley lecture in October 2018 for Ofcom to more formally and systematically measure the final outcomes that specific regulatory interventions deliver for consumers and society as a whole.¹ We would encourage Ofcom to outline what it expects these outcomes will be for each of their final Annual Plan work items. This is important if the sector is going to focus its efforts on the right challenges, if it is going to meet them in the most efficient and effective way, and if it is going to be responsive, agile and innovative.
- 4.2 In the proposed Annual Plan, Ofcom lists its key priorities for monitoring and enforcement over the next year. In our view, where Ofcom's policy priorities are successful this leads to lower volumes of enforcement actions later on. We would therefore like to see a closer alignment between Ofcom's policy development and enforcement programmes, and a more structured way to feed back any lessons learned as part of such enforcement into policy debates, including discussing these with external stakeholders as appropriate.
- 4.3 Ofcom's increased focus on consumer engagement necessitates appreciation of the fast-pace change in retail markets, including all the channels through which consumers buy services. It is important that policy-makers have a thorough understanding of how customers use services in the relevant markets and that, wherever possible, they think strategically about future trends and innovations.

Effective roadmap planning and keeping stakeholders informed

- 4.4 We invite Ofcom to issue long-term milestones in the form of a multiyear roadmap. In doing so, BT along with other CPs would be able to plan more effectively. It is important that when Ofcom consults, it provides stakeholders with sufficient time to meaningfully respond, particularly if several consultations on a topic are being published at the same time. We have had a significant amount of regulatory change to implement; some of these changes could have been grouped together if Ofcom ran multiyear roadmap views and delivered in a more cost effective manner.
- 4.5 It would help BT and industry if Ofcom was to give adequate prior notice of consultations, and to space out publications where possible. The more notice we have about consultation timeframes, the better we and other stakeholders can plan appropriately in order to respond. For example, the consultations and statements relating to spectrum that were published in December 2018 and January 2019 have created a significant workload which requires specialist knowledge. Putting strain on a particular pool of resources at one time, without the ability to plan ahead, can limit the ability for stakeholders to effectively engage and comment on the substance of Ofcom's consultations. We would encourage Ofcom to take this into account when planning its

¹<https://www.btplc.com/Thegroup/Policyandregulation/downloadcentre/2018/CathrynRossRegulationandInvestmentinTelecoms/BeesleyCathrynRossspeech.pdf>

output in the future; allowing us more time to plan and respond in the most meaningful way.

- 4.6 Providing updates to this plan on a regular basis would also be helpful and BT asks Ofcom to consider updating the plan when changes are made. It can be difficult for stakeholders to ascertain the status of items in the work plan that have passed their target release dates. This can involve trawling through email updates, searching online to find publications, or contacting Ofcom directly to ask for an update. Often this is because an item is delayed or even removed from the plan at some point during the year rather than because it's been missed. Short-term changes are hard to plan for in terms of allocating resource and meaningfully responding, but we understand that this can happen. However, it would be ideal if Ofcom would publish the final work plan online and update it in real time, making it clear where changes have occurred to allow stakeholders to adjust their planning accordingly.
- 4.7 BT welcomes the move from Ofcom to publish a consolidated work plan as opposed to a separate work plan and work programme like it did historically. However, it would be beneficial to include the Ofcom leads alongside each item on the final work plan (as used to happen in the work programme) to enable stakeholders to identify who the accountable person is within Ofcom to contact on each topic.
- 4.8 Finally, we would ask that Ofcom includes further clarity on the deliverable timelines in the final work plan, which in many cases lists work packages as 'ongoing'. Providing stakeholders with milestones will allow effective planning and allocation of resources.

Ofcom's approach to data collection

- 4.9 We continue to support evidence-based policy decisions and acknowledge the role of Statutory Information Requests (SIRs) in ensuring the provision of accurate data to Ofcom. As Ofcom is aware, over the past several years we have worked consistently to implement continuous improvements to our internal processes for responding to SIRs, and we will continue to engage with Ofcom about this.
- 4.10 We also fully support Ofcom's planned implementation of a data strategy approach based on an audit of current capabilities and future requirements. There is tremendous value in gathering meaningful, proportionate data to inform policy decisions which result in the right outcomes for consumers. It is important, however, to ensure requests for such data remain proportionate. New technology and innovation should be harnessed to meet these goals. We would welcome a collaborative approach to the implementation of such a data strategy and we ask that the approach is reviewed in a transparent and consistent way. In particular:
 - The results of the audit should be shared with the industry;
 - It would be helpful if the data strategy included gathering oversight of all data already available to Ofcom, so that data is only requested from CPs when Ofcom do not have access to it in any other way;
 - Ofcom could closer collaborate with CPs so that data is requested in a meaningful and comparable way, taking into account internal systems to ensure requests remain proportionate; and

- A consistent approach should be adopted internally to reduce operational effort in dealing with data requests and to avoid similar requests for data from different departments.

4.11 We welcome this opportunity to provide suggestions to Ofcom as the final work plan for 2019/20 is developed. We are happy to provide further input directly on any of the issues raised in this response.