



Proposed Annual Plan 2018-19

BT's Response to consultation published on 1 December 2017

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Comments should be addressed to:
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1 Introduction

- 1.1 BT welcomes the opportunity to comment on Ofcom's proposed Annual Plan for 2018-19. This is an important guide to Ofcom's work priorities which helps us plan our regulatory activities and engagement. We look forward to working pragmatically and collaboratively with Ofcom, and others as appropriate, on many of the items highlighted in Ofcom's work plan.
- 1.2 We note that since the draft Annual Plan was published there have been a couple of significant developments: the recent announcement by Government of plans to introduce a regulatory universal broadband service obligation, and the decision of the Court of Appeal on the annual licence fees for spectrum in the 900MHz and 1800MHz bands.
- 1.3 Both are critical issues for BT and industry as a whole, and we anticipate they will require significant resource and time from Ofcom. We are keen to input early and constructively, and look forward to Ofcom's articulation of how both issues will be taken forward. We would also welcome the opportunity to comment further on any re-prioritisation that may be required as a result.
- 1.4 BT is delighted to see Ofcom's achievements in the areas of diversity and inclusion, and we welcome Ofcom's plans in this area.¹ Accessibility and diversity are key issues for the future health of the sector and are issues that BT has been working hard on for some time. We fully support Ofcom's efforts and would like to explore ways to collaborate to further drive forward on this important area.
- 1.5 BT will engage and convey detailed views and relevant evidence on the individual strands of work at the appropriate junctures throughout the year. We have therefore focused the remainder of our comments in this response on those areas that we believe merit particular attention, including some which we consider have been overlooked. We also take the opportunity to make some general comments on how Ofcom works and engages with stakeholders, and we suggest some areas where improvements could be made in the spirit of better regulation.

2 BT supports Ofcom's priorities in the Annual Plan

- 2.1 BT supports Ofcom's long term strategic goals as articulated in the plan, and the priorities identified under each of these. In particular, BT strongly welcomes Ofcom's desire to support **investment in both fixed and mobile networks**. Our stated objective is to continue our investments in both. Openreach has announced plans to provide 3 million homes and businesses with FTTP by the end of 2020, with the ambition to build a 10 million FTTP footprint by the mid-2020s. EE's ambition is to reach 95% of the UK with superfast 4G by 2020. The scale of the investment and associated risks calls for a supportive regulatory and policy environment that recognises the long term nature of the commitment by industry, the importance of ensuring a fair return on

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0019/109711/consultation-diversity-inclusion-plan.pdf

such commitment and that also provides greater commercial freedom where there is evidence of competitive pressure.

- 2.2 A number of core principles are important to BT (as investor in Openreach) in this regard. Firstly, infrastructure competition provides an important opportunity to re-calibrate the regulatory approach. In particular it should focus on enduring bottlenecks not intervene at multiple levels of the value chain; it should also enable full and fair competition on a level playing field. Secondly, in the context of long-term investments, any regulation must be consistent and predictable and designed with the intention that it will endure. Within such a framework, market-led solutions (and high-powered incentives) will emerge to address the inherent demand and supply side uncertainties.
- 2.3 BT is working hard to ensure timely **implementation of the Digital Communications Review** (DCR) settlement. We are committed to full compliance with both the letter and the spirit of the DCR commitments and recognise that this will benefit other communications providers, bringing clarity about the rules and principles that BT and Openreach are operating to, and making the DCR settlement a success for industry as a whole. We have made changes to how Openreach is run, so it makes more of its own decisions, steered by an independent Board of experienced people from across industry.
- 2.4 Openreach continues to treat all customers equally, but new, and more transparent, ways of working with CPs are now in place. In particular, a new formal consultation process for major investments has been established including a confidential stage allowing customers to discuss ideas without this being disclosed to BT Group. Openreach also has more freedom to consider co-investment and risk-sharing opportunities with other service providers. These reforms are an important mechanism for ensuring that Openreach makes strategic decisions on infrastructure deployment which are most likely to meet the needs of CPs and end customers.
- 2.5 We note Ofcom's programme for **spectrum release** and stated desire to enable the launch of 5G in the UK. In that respect, we urge Ofcom to pursue the clearance of 3.6 – 3.8 GHz by mid-2020 with equal vigour to that expended to completing the 2.3 and 3.4 GHz auction. We also note that Ofcom plans to consult on the award of 700 MHz and 3.6 – 3.8 GHz in Q3 of 2018-19. We believe this should be brought forward given the importance of getting spectrum to the market in a timely fashion.
- 2.6 Ofcom plans to complete the **Business Connectivity Market Review** by March 2019. This is an ambitious and tight timetable, which will require significant efforts from industry to assemble and provide Ofcom with the necessary evidence to conduct its assessment. Given the importance and implications of this review, we urge Ofcom to keep industry informed and updated on progress, particularly if any delays are envisaged.
- 2.7 In carrying out this review, it is essential that Ofcom ensures its approach and conclusions are consistent with the principles of the regulatory framework, in particular that remedies are set using up-to-date evidence, proportionate and that their effect is to promote efficient investment. This means, for example that any pricing remedies encourage customers to migrate to newer services rather than stay

on legacy networks, charge controls allow full recovery of efficiently incurred costs and any mandated minimum service levels are achievable.

- 2.8 Finally, Ofcom acknowledges its role in working with government, and collaborating with European and international partners to ensure a smooth transition and effective regulation post **Brexit**. BT supports and welcomes this. We are keen to continue to contribute views on the impact of Brexit for the communications sector. Whilst we should consider opportunities to improve it, a critical element of the sector's future competitiveness post-Brexit will be a similarly stable, predictable, independent and proportionate regulatory environment which includes appropriate checks and balances.

3 Comments on specific work items of the Annual Plan

- 3.1 BT supports Ofcom's objective to ensure that markets work for consumers. As part of this, Ofcom has an on-going work programme on **consumer engagement**. We would welcome more co-ordination between Ofcom and the Government in this area, and transparency about how the work will be organised, to ensure that consumer protection and engagement initiatives are aligned and not duplicated. BT is keen to ensure that whatever is done to improve consumer engagement reflects a good understanding of how consumers make choices and act in the real world, and so we would support the use of trials and tests of any intervention and would be happy to work with Ofcom on this.
- 3.2 **Future of Voice** is a complex item of Ofcom's work plan. Migration from PSTN to IP has many challenges, not least in the areas of consumer protection, special services, resilience of telephone networks, porting, numbering and CLI. BT feels these must be considered and addressed early by the industry, in order to minimise disruption and difficulties later on. To ensure this, we have a significant strategic programme under way. However, successful migration requires coordination from *across* industry, and pro-active consumer engagement. Although full migration is a few years away, we welcome the involvement and coordination from Ofcom now to support the programme and ensure that solutions are fit for purpose. This will help ensure that both the industry and consumers are well informed about the implications of the migration (and can make the necessary preparations to address any difficulties that might arise), but also allow Ofcom to identify early any issues that may require further regulatory attention. We stand ready to work constructively with Ofcom and other CPs to ensure migration to IP is a success.
- 3.3 An important element to consider in the migration from PSTN to IP is the impact on **public payphones** and the significant investment that may be required as a result of this migration. Payphone regulation has not changed for over a decade during which accessibility and coverage of mobile services has improved drastically and payphone use has fallen sharply. BT continues to have a regulatory obligation to provide a public payphone service under the USO, a requirement that has fallen away in many other countries. As part of any wider work Ofcom may undertake on USO there is now an opportunity to reconsider whether the public payphones element of the USO remains

relevant in the light of the changing patterns of telephone usage and availability of alternatives such as mobile phones.

- 3.4 BT and others in industry are still awaiting Ofcom's conclusions from its review in 2016 of **geographic number charging**. Ofcom's pilot scheme, initially envisaged to last two years is now into its fifth year and CPs continue to be charged, including in some areas where there are no longer concerns around number shortages. BT looks forward to Ofcom's conclusions and hopes for an alternative system that rewards efficient utilisation.
- 3.5 We note the importance of **media and broadcasting** work in Ofcom's plan. Methods of media distribution are changing and both "old" and "new" require consideration from a public policy perspective. We think it is important for Ofcom to consider all subscription content services as part of their work in this area. This includes well established players and newer SVOD services (in particular willingness to supply and the terms of distribution that may be attached to that), as both can impact network development and consumer interests.

4 Working together better

Statutory Information Requests

- 4.1 BT supports the principles of better regulation; we believe that regulatory interventions should be proportionate, targeted and transparent, and that regulation is best carried out by independent and appropriately resourced bodies. We are firm believers in the importance of evidence-based policy, and recognise that we and others in industry have a role to play in allowing Ofcom to follow these principles, not least to provide complete, accurate and timely information and data.
- 4.2 This is particularly the case in response to Statutory Information Requests (SIRs), which have steadily increased over the last years. BT understands that Ofcom requires complete and accurate information, and we continue to devote a great deal of effort and resource to this. We have also worked consistently to improve our internal processes to ensure the information we provide is reliable, and are committed to continue making improvements to meet Ofcom's objectives.
- 4.3 Ofcom had initiated a review of its processes in 2015, but the conclusions were never shared with industry. We would welcome closer collaboration and pragmatism in the design and implementation of any future changes to Ofcom's approach to SIRs.

Communicating the plan and measuring success

- 4.4 BT recognises the need for Ofcom to be agile and re-set priorities throughout the year and notes that Ofcom's preference is to do this via a separate update to their programme of work (which is different in format and content from the annual work

plan).² We would find it helpful to have a single, consolidated programme of work which is updated at regular intervals. This would allow us to plan our work and make adjustments accordingly, and allocate resources efficiently.

- 4.5 We would also appreciate if Ofcom provided more detail on its longer term plans and would welcome opportunities for further dialogue, jointly with others, on the future direction of the sector. Many of Ofcom's work packages run across several years and stakeholders and consumers alike would benefit from a better understanding of how Ofcom sees its priorities and major projects evolving over a longer timeframe, as part of its overall strategic framework. As part of this, we would invite Ofcom to consider a move to longer market review cycles, which would help create longer term certainty for investors. Given many of our investments span decades, a predictable, consistent and transparent framework for the long term is essential.
- 4.6 Ofcom reports annually on its performance, and this includes an assessment of progress against Ofcom's Annual Plan priorities as well as some consideration on how Ofcom has delivered its work. BT would appreciate the opportunity to input into this exercise in whichever way Ofcom considers most useful. Ofcom could, for example, hold public workshops, in England (possibly in London and also in regions), Wales, Scotland and Northern Ireland, where stakeholders and consumers are invited to feedback and share reflections on Ofcom's delivery. This would build on Ofcom's work to date on transparency and accountability, and allow for an honest and open discussion on ways of working and lessons learned, that can help inform future plans.

² In response to BT's request last year that Ofcom consolidate the work plan and the programme of work into one document Ofcom explained (paragraph A2.58, Ofcom's Annual Plan 2017-18) that it would be impractical to consolidate the two documents into one because one is updated quarterly. However, we are not aware of any updates over the last year.