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Non-confidential
Sent by email only to annualplan2018@ofcom.org.uk
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Three's response to Ofcom's Proposed Annual Plan 2018/19

1. This is Three's (Hutchison 3G UK Limited) response to Ofcom's consultation on its Proposed Annual Plan for 2018/19, published 01 December 2017.¹
2. Since we launched in 2003, Three has focused on ensuring that our customers can make the most of their devices and data services. This has been done through market-leading propositions, including 4G at no extra cost (to 3G), Feel At Home and our 123 proposition. As a result, Three is the largest carrier of mobile data, carrying nearly a third of all the UK's mobile data traffic.
3. Three welcomes Ofcom's publication of its Proposed Annual Plan and the opportunity to comment on the proposals. Three recognises the important role that Ofcom has in ensuring that the communications sector works well for consumers, and we continue to fully support Ofcom's work on improving consumer engagement. Ofcom plans to achieve this by identifying and addressing barriers to competition and to consumers exercising choice and we look forward to Ofcom's work in this area.
4. Below, we provide our views on certain areas set out in Ofcom's annual plan document. These are set out in line with Ofcom's three strategic goals: promote competition and ensure that markets work effectively for consumers, secure standards and improve quality, and protect consumers from harm. We then set out some additional areas which we believe Ofcom should focus on as priorities for the 2018/19 financial year.
5. Beyond our comments on Ofcom's proposed areas of work, Three would welcome a more co-ordinated and open approach among UK regulators. While there has been some progress in this area in recent years, such as the work between Ofcom and the Advertising Standards Authority on landline and broadband pricing, it is important that Ofcom looks to work more closely with other regulators. This will help Ofcom address some of the challenges identified in this response, such as the complex issue of mobile handset and airtime contracts.

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0018/108324/Proposed-Annual-Plan-2018.pdf.

Promote competition and ensure that markets work effectively for consumers

‘Support investment in network infrastructure’ and ‘Start the next competition assessment of the Business Connectivity Market’

6. These two items in Ofcom’s work plan both concern the underlying problem of a lack of competition in fixed telecoms infrastructure. Regarding the first, Ofcom plans to implement regulation following its Wholesale Local Access (WLA) market review, including regulated access to BT’s duct and pole network, and to continue working with industry to support investment in advanced, competing infrastructure, including co-investment. Regarding the next Business Connectivity Market Review (BCMR), Ofcom will review the provision of higher-speed business connectivity services across the UK, including the supply of fibre backhaul to mobile network operators, an essential component in the provision mobile services to customers.
7. Three fully supports Ofcom’s ambitions in these areas. The emergence of competing fibre networks is critical for the future of the UK’s telecoms infrastructure. As government acknowledges, fibre backhaul will be crucial for 5G services, because it can offer the higher capacity and lower latency required for 5G.² However, Ofcom’s previous Business Connectivity Market Review found that just 20% of UK postcodes have a choice of two or more providers for fibre services; in most areas of the UK, Openreach’s network is the dominant provider. Three considers that only regulated access to Openreach’s dark fibre will ensure the conditions under which 5G can be deployed in a timely and cost-effective way. Ofcom must therefore prioritise the introduction of an uncapped DFA remedy through the next Business Connectivity Market Review.
8. Ofcom’s next Business Connectivity Market Review must also consider whether a duct and pole access (DPA) remedy is required for business connectivity uses, including mobile backhaul. Three considers that regulated DFA and DPA are complementary remedies that are required in combination to address the lack of competition in the leased line market, and to safeguard the timely roll-out of 5G services to customers.
9. Ofcom will also be implementing the remedies from its WLA Market Review, including regulated DPA. Ofcom has proposed that access to this remedy should be primarily for the deployment of broadband access networks. In implementing this remedy Ofcom must employ a sufficiently broad, and technology neutral, interpretation of broadband to include services delivered via Fixed Wireless Access technology which can provide equivalent end-user experience. In monitoring the ongoing operation of the remedy, Ofcom should ensure that the usage condition is not used to undermine the roll-out of competing fibre networks, and in particular, infrastructure investors’ ability to de-risk their deployments through the supply of non-broadband access services to anchor tenants, such as backhaul services to MNO and LLU operators.

Ofcom's work on mobile spectrum

10. In Ofcom's Proposed Annual Plan, it sets out several work areas relating to mobile spectrum across the 2018/19 financial year.
11. As part of Ofcom's work to '*Prepare for future awards of spectrum bands as they are cleared and released*', it will be considering auction design, mobile coverage obligations and any measures to promote competition. Three will respond to upcoming consultations from Ofcom in these areas but urges Ofcom and government not to mandate increased coverage requirements for all MNOs beyond 90% of UK landmass. We discuss this more under Ofcom's work to '*Improve mobile coverage*' in paragraphs 15 to 19 below.
12. Relating to Ofcom's work in '*Preparing to make sufficient spectrum available for 5G*', Three supports Ofcom's aims and welcomes more clarity on the outcomes it is trying to achieve. We urge Ofcom to prepare as much spectrum as possible, as quickly as possible, to help the UK realise the benefits of 5G.

'Help consumers, including SME businesses, engage with communications providers'

13. Ofcom is aiming to help consumers and SMEs engage with their providers by identifying and addressing barriers to competition and to consumers exercising choice. At Ofcom's Annual Plan event on 10 January 2018, Jane Rumble (Director of Consumer Policy) explained that Ofcom will be testing and trialling interventions with consumers and will provide an update in Q1 2018/19 and then publish a consultation in Q4 2018/19.
14. Three fully supports Ofcom's work in this area and is happy to engage with Ofcom on these interventions. Three has a track record of campaigning for reduced barriers to consumer engagement and regulatory changes that benefit consumers.

Secure standards and improve quality

'Improve mobile coverage'

15. Mobile network providers (MNOs) are currently required to provide mobile coverage to 90% of the UK's landmass. Ofcom is aiming to ensure that these existing obligations are met and will also consider some new coverage obligations where new spectrum is awarded, e.g. in the 700MHz spectrum band. We also note that the Conservative Party's 2017 manifesto included a pledge to increase mobile coverage to 95% by 2022.³
16. Three supports the ambition for improved mobile coverage in the UK, but Ofcom and government must understand that in certain areas of the UK, particularly remote and hard-to-reach areas, it is not economic for MNOs to provide mobile coverage.
17. Improving mobile coverage is a public policy priority, and as such, it is appropriate that government funds are used to achieve it. Alternatively, Ofcom could include a coverage obligation in one of the 700MHz licences to be awarded, as it did in relation to 800MHz spectrum auctioned in 2013. Three urges Ofcom and the government not to mandate

³ Page 78: <https://www.conservatives.com/manifesto>.

increased coverage requirements for all operators beyond 90% of UK landmass, not least because the cost of extended mobile coverage obligations would disproportionately affect smaller MNOs, including Three.

18. We urge Ofcom instead to look innovatively at how to improve coverage, without detracting investment from core businesses, imposing disproportionate costs on smaller operators and distorting competition. In particular, policy makers should look at how public-funded investment in infrastructure, including the Emergency Services Network programme and the Scottish Government's ambition to build new masts as part of its 4G infill programme, might be used effectively to improve both coverage and competition.
19. In this regard, Three notes that improved co-ordination is required between Ofcom, government, MNOs and the rail and road industries to improve mobile coverage on transport corridors. Where public policy involves providing access to infrastructure for the purposes of improving mobile coverage, it must be at prices that reflect the underlying costs, rather than prices reflecting market considerations. Three is looking forward to working with Ofcom and indeed government on how best to bring forward effective reform to the benefit of consumers in this area.

Protect consumers from harm

20. The two areas which we discuss below are not mentioned in Ofcom's Proposed Annual Plan but we consider that they should form part of Ofcom's work on protecting consumers from harm.

'Mobile phone contracts'

21. Three notes that at Ofcom's Annual Plan event on 10 January 2018, Ofcom indicated that it is looking at the complex issue of mobile handsets and airtime contracts, especially bundling payments beyond the minimum contract term period.
22. Three supports Ofcom's work in this area but is concerned that current regulations are producing poor outcomes for consumers. Consumer credit agreements are not designed for handset and airtime packages – they come with substantial paperwork and result in the duplication of effort, without offering any additional protection to consumers.
23. The current rules prevent MNOs from automatically reducing prices to consumers after their minimum contract term (covering both a handset and airtime), because MNOs would have been deemed to have issued credit, which can lead to unenforceable contracts. Three believes that a simple and quick solution is to amend secondary legislation and have a carve out to cater for the joint sale of handsets and airtime. This approach has already been successfully implemented in Australia, where providers can offer 0% APR payment plans, and there is no evidence of consumer harm.
24. Further, this would allow MNOs to make bills more transparent and to operate in an Ofcom-regulated environment, where consumers would have a one-stop shop for complaints, rather than having to deal separately with their handset and airtime providers. Three would be happy to work with Ofcom further in this area.

'Increased bundling of fixed and mobile services'

25. Three welcomes the joint intervention from Ofcom and the Advertising Standards Authority that addressed unachievably low fixed broadband prices which were buried among substantial line rental charges.⁴
26. Three is concerned that the increased marketing of bundled services, in particular those that include both fixed and mobile services, has the potential to mislead consumers due to the complex nature of the bundles. Three urges Ofcom to monitor the pricing practices across fixed and mobile telecoms, to ensure that providers can not advertise unachievably low headline prices for mobile services while hiding the much higher cost of fixed services.

⁴ <https://www.asa.org.uk/news/changes-to-broadband-price-claims-in-ads-comes-into-force-today.html>.