



Vodafone Response: Proposed Annual Plan 2018 /19

Vodafone operates in many markets in the UK that are regulated by Ofcom. We serve the full spectrum of UK consumers with a range of fixed and mobile connectivity solutions – from residential customers through to very large enterprises and everyone else in between. Although we are a global business, the UK is our home market and we remain committed to serving all of our customers to the best of our abilities, equipping them with the solutions they need both today and in the future.

Addressing Market Failure

Many of the markets we operate in are characterised by the presence of Significant Market Power (SMP), which has a direct or indirectly impact that requires regulatory remedies to correct. Addressing market failure isn't straightforward and unchecked it can result in a combination of high prices, poor quality, under-investment and a lack of innovation. In many cases ex-ante regulation attempts to address all of these issues, but it is hard to do this using ex ante regulation alone. We have seen outcomes, particularly in wholesale regulated markets, where excessive returns have become the norm, at the direct expense of competitors and consumers.

Since the creation of Openreach, BT's excess returns have amounted to £10.5 billion¹, this is over and above the £15Bn cost of capital benchmark return Ofcom expected BT to recover. In an industry that is wrestling with the consequences of historic underinvestment in fixed network infrastructure that prevents all consumers from achieving a basic broadband speed of 10Mb/s, it is frustrating that such excess returns are not regarded as the primary means to make good this under-investment. Any suggestion that BT needs help from either the state or other parts of the industry to make good their previous under-investment is misguided and will only lead to further under-investment. In the interests of fairness and in creating efficient incentives for the future, any investment in the Openreach network to meet USO commitments should be self-financed in the first instance, in full recognition of both the historic and expected profitability of the Openreach business, as a Broadband USO would not even be required had adequate investment in infrastructure occurred.

Ofcom's expanding role

We recognise that Ofcom's responsibilities are now greater & wider than ever, with the BBC the latest significant institution to fall under Ofcom's remit. A regulator with a larger scope is an opportunity for learning and cross sector expertise sharing, but it also

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0018/107118/Vodafone-Frontier-report.pdf



means a bigger priority list and creates the hazard that the Ofcom's Board and the wider organisation will have less time to focus on the issues that matter in each sector. We urge Ofcom to have the necessary safeguards in place to prevent any area from being overlooked and we would welcome a clear focus on each sector, each of which, in its own right, is vital to the UK's economic and cultural wellbeing.

We operate in ever competitive markets in turbulent economic times. Despite this Vodafone continues to invest in both fixed and mobile infrastructures in the UK. However, we were disappointed to learn last year that we faced a rise of 14% in the administrative charges levied by Ofcom on the communications sector for 2017/18. Such an increase is not something that Ofcom would allow Vodafone or others in the market to contemplate. With an expanded remit we hope that Ofcom will be able to operate more efficiently, with common costs shared more widely and the burden distributed across the various sectors regulated by Ofcom, resulting in a reduction in communication sector fees in the years ahead.

Communication Sector Leadership

The Communications sector is vital for the economic and social wellbeing of the nation. In an era of uncertainty, not least around the UK's exit from the European Union, regulatory clarity can provide the right investment signals to the market. While Ofcom itself is not responsible for that investment, it has a significant role both in terms of creating the right regulatory environment to attract new investment and providing the certainty needed for others to finance new infrastructure.

Alternatively, a lack of regulatory vision can undermine investment. We have witnessed, UK governments, European institutions and Ofcom creating and enforcing a variety of regulations that overlap and in some cases conflict. For instance, recent examples of such regulation include bill capping as part of the Governments' Digital Economy Act, and the Payment Services Directive 2, mandating bill caps relating to a subset of services. The EU Roaming Regulations specify another set of caps. There is little appreciation for the lack of co-ordination between these different initiatives, the confusion this will cause for consumers, and the complexity and cost for communication providers to implement these. Notwithstanding their incompatibility with General Condition obligations which require open access (rather than barred access) to numbers. In addition, these often very prescriptive regulations leave less and less room for communication providers to differentiate their propositions.

In the past we have asked Ofcom to put in place indicators to assess the success of its interventions. In order for stakeholders to assess the effectiveness of its interventions, Ofcom should consider what the success criteria for an intervention looks like before making the intervention, defining relevant KPIs, and reporting on them to industry.



Ofcom's first Quality of Service publication is a good example. It would be helpful to understand how consumers have engaged with it, whether they considered the information valuable, and whether they took it into account when deciding to take out a contract.

Key Priorities in the UK Communications sector

We have set out below some of the key areas to prioritise for the year ahead:

- We welcome the emphasis placed in the proposed annual plan on the Business Connectivity Market Review to ensure appropriate regulation is in place from 2019 onwards. This is a vital strategic market for the UK economy which underpins commerce, the public sector, social interactions and content provision. The availability of a viable, fit for purpose Dark Fibre product that can be used without restriction is at the heart of this review and is necessary to ensure UK enterprises can benefit from a more vibrant and competitive business connectivity landscape.
- Securing the availability of high quality, reliable and consistent Regulatory Accounting information is something that is necessary to combat market failure and the information asymmetry that exists between BT and other stakeholders (including Ofcom). Regulatory Accounting doesn't have a high profile, but it is crucial to much of the work Ofcom undertakes in the telecoms sector. The publication of high quality, reliable accounts is beneficial to competition and consumers, who although not directly involved in the process, benefit from the transparency that the accounts provide. Ofcom needs to invest the time and resources into improving the accounts, unlike other regulated industries there is little opportunity for peer review and information asymmetry gaps can only be addressed by quality, reliable & transparent regulatory accounts.
- Ofcom's ambition to hold the PSSR auction as soon as viable is welcomed. In parallel, Ofcom should ensure that the 700MHz and 3.6GHz bands are brought to market in a timely manner, and in the longer term that mm-wave bands such as 26GHz are made available. Vodafone welcomes Ofcom's exploration of innovative spectrum licensing models, but this cannot be at the expense of exclusively licensed spectrum which forms the bedrock of open access public mobile networks. It is important that focus on spectrum used for access purposes does not mean that the corresponding spectrum required for backhaul purposes is neglected. We welcome Ofcom's proposals in the recent fixed wireless strategy review, and will work with Ofcom to make these a reality.
- Vodafone recognises that mobile coverage matters to our customers, policy makers and key influencers such as MPs. We are committed to working with Ofcom to ensure that there is coverage where the UK population live their lives



and to ensure that meaningful, relevant coverage information is provided to consumers. The balance between the public interest desire for increased coverage and a return for shareholders to encourage and enable further investment is something that needs to be well studied this year. Coverage obligations and the associated value of spectrum licences could be important enablers of investment.

- Payphones remain important for many consumers, providing a valuable and accessible means of communication, however Communications providers are being over-charged by BT for receiving free calls from the Payphone network, through the application of the Pay Phone Access Charge (PAC). Ultimate this high charge (currently 70 pence per minute) is passed on to the businesses and public sector bodies that make use of free to caller services. The reality is BT makes a profit from the payphone network as a whole², with urban and suburban payphones making significant profits through advertising that more than fund the loss making rural network. Ofcom urgently needs to conduct a payphone review to both control the spread of urban payphones motivated purely by advertising revenues rather than public service³ and remove the outdated payphone access charge which imposes an unnecessary financial burden upon UK businesses and the public sector.
- To ensure the success of Mobile Switching reforms, Ofcom needs to take a more hands on approach to ensuring the reforms to Mobile Switching are success. Ofcom has decided to leave the implementation of the changes to industry and while Vodafone will work together with industry to make sure implementation will work, this is quite a complex change, requiring all operators, MVNOs and resellers to be involved. It would be greatly beneficial if Ofcom were to take a more active role, similar to the approach taken for other big industry changes.

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² https://www.ofcom.org.uk/__data/assets/pdf_file/0019/107047/Vodafone-Cartesian-report.pdf

³ <http://www.telegraph.co.uk/news/2018/01/27/stop-phone-boxes-trojan-horses-adverts-councils-say/>