



Zayo's response to
Ofcom's draft Annual Plan for 2018/19

February 2018

1 Introduction

- 1.1.1 Zayo Group is a global provider of communications infrastructure services, including Dark Fibre, Wavelength, Ethernet and IP services. Zayo operates in the United States, Canada, France, Germany, Netherlands, Belgium, Switzerland, Italy, Ireland and the United Kingdom. Zayo was founded in 2007 and is headquartered in Boulder, Colorado, with European headquarters in London and Paris.
- 1.1.2 Zayo's UK network spans more than 450,000km of fibre strands and connects over 130 data centres via unique routes including alongside national gas pipelines and within London's sewer system. Zayo provides many customers with dedicated fibre connections utilising a combination of on-net, new construction and off-net leased fibre. Zayo extends its network to customer premises with a combination of purchased dark fibre as well as self-installed new-build fibre.
- 1.1.3 As a supplier to national broadband service providers, Zayo maintains a strong interest in the competitive broadband market.

2 Zayo's comments on Ofcom's draft Annual Plan

2.1.1 Zayo welcomes the opportunity to comment on Ofcom's draft plan and to participate in Ofcom's proposed activities throughout the coming year.

2.1.2 Zayo's business focus is the construction and provision of high quality future-proof all-fibre networks to end users and to other communications providers (CPs). Our main regulatory focus is therefore on ensuring that regulation facilitates the investment in new fibre networks, independent of which downstream market(s), such networks serve¹.

2.2 Ofcom's work on fixed network market reviews

2.2.1 Zayo has submitted a number of responses to Ofcom recent consultations in relation to the ongoing wholesale local access market review (WLAMR) and to Ofcom's proposed activities in the business connectivity market (BCM). In those responses we have highlighted the inconsistencies in Ofcom's approach to regulating the WLAM and the BCM, where Ofcom claims to encourage investment in network competition in the WLAM², but actively discourages such network competition in the BCM. Zayo (and other investors in new fibre networks) has explained to Ofcom that the physical fibre infrastructure it builds is intended to serve a number of downstream markets at both retail and wholesale levels. The level of investment required to deliver new fibre infrastructures necessitates access to all potential revenue streams to produce the rate of return required to justify such investments. It would also be inefficient to have separate fibre networks serving each downstream market, given that a fibre network is application agnostic and can easily serve a number of different markets.

2.2.2 In the draft plan, Ofcom appears to be propose a continuation of that inconsistent regulation. In the plan Ofcom lists the following activities:

Support investment in network infrastructure: We will implement regulation following the Wholesale Local Access market review and continue to work with industry as necessary to support investment in advanced, competing network infrastructure, including co-investment.

and

Start the next competition assessment of the Business Connectivity Market: We will take account of the needs of businesses, telecoms companies and consumers in reviewing the provision of higher speed business connectivity services across the UK.

2.2.3 It is striking that Ofcom's activities in undertaking market reviews on these two very closely related markets are articulated in such starkly different ways. One has the explicit objective to support investment whilst the other makes no mention of supporting investment.

¹ That is, the same physical fibre networks can serve the business connectivity market, the wholesale local access market or the mobile markets.

² Zayo's welcomes Ofcom's stated aims to encourage investment in competing fibre infrastructure in the WLAM, but does not agree with Ofcom that the proposed regulatory regime will deliver the desired level of investment.

2.2.4 Zayo urges Ofcom to step back and assess how it can best regulate for the benefits of consumers and users in all markets that use fibre networks and how it can best encourage efficient investment to deliver the fibre networks to support the UK's digital economy overall.

2.3 Ofcom's review of a dark fibre remedy in the BCM

2.3.1 Ofcom is currently consulting on the imposition of a dark fibre access (DFA) remedy in the BCM, as part of the Temporary Conditions (TCs) imposed by Ofcom following the ruling by the CAT on the appeals of Ofcom's 2016 BCMR Statement.

2.3.2 The draft plan suggests that a statement of Ofcom's conclusions from that consultation will be issued in Quarter 1 2018/19 (that is between April and June 2018). Zayo finds the inclusion of this activity in the 2018/19 plan surprising and confusing. The consultation document suggested that a Statement would be issued around the end of February 2018, giving BT a 1-month notice to implement the DFA remedy by April 1 2018.

2.3.3 Ofcom's justification of imposing the DFA remedy, as part of the TCs, assumes that the remedy will be in place for one year before the next BCMR is due to be completed and implemented by April 1 2019. The draft plan, however appears to envisage a later implementation of the DFA remedy³.

2.3.4 Zayo has already submitted its analysis of Ofcom's proposed DFA remedy as part of the TCs and wishes to reiterate here that it considers the DFA remedy to be ill-conceived and Ofcom's arguments in support of the remedy to be weak and unsubstantiated. Zayo considers the usage restriction on the proposed DFA remedy to be unenforceable unless BT installs active equipment on the dark fibre connection, which would completely negate the benefits Ofcom claims the temporary DFA remedy would generate.

2.3.5 As it is now evident that the remedy would be in place for less than 12 months, before the introduction of the outcome of the next BCMR, Zayo considers Ofcom's continued efforts to introduce the DFA remedy as part of the TCs to be disproportionate and inappropriate in the extreme. The uncertainty and disruption resulting from this consultation, and the potential short term imposition of the DFA remedy, significantly outweigh any benefits that Ofcom may claim from the remedy.

2.3.6 Zayo strongly urges Ofcom to close the DFA consultation and focus its and the sector's efforts on constructive forward-looking regulatory measures that will encourage investment in new future-proof fibre networks serving all relevant markets in the UK (including the BCM, the WLAM and the market for mobile services, which rely on fibre connectivity).

³ Zayo also notes that it would now not be possible for Ofcom to issue its final Statement on the DFA remedy by the end of February, as it must give the European Commission at least one month to comment on its Draft Statement under the Article 7 procedure.