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**Non-confidential**  
**By email only**  
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## **Three's response to Ofcom's Proposed Annual Plan 2019/20**

1. This is Three's response to Ofcom's consultation on its Proposed Annual Plan for 2019/20, published 3 December 2018.<sup>1</sup>
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. We continue to act as a market challenger. Our upcoming fixed wireless product will introduce additional competition in the retail broadband market and deliver more choice and better value for consumers and citizens. We have also made significant investments in our network and spectrum holdings to ensure that we are able to offer our customers the best 5G services possible.
3. Three welcomes Ofcom's publication of its Proposed Annual Plan and the opportunity to comment on its proposals.
4. In this response, we provide our views on certain topics which Ofcom has set out in its Proposed Annual Plan. These are grouped into Ofcom's three strategic goals:
  - a. Promote competition and ensure that markets work effectively for consumers;
  - b. Secure standards and improve quality; and
  - c. Protect consumers from harm.

### **Promote competition and ensure that markets work effectively for consumers**

#### *Preparing for the launch of 5G mobile services*

5. We are pleased to see that Ofcom has recognised preparing for the launch of 5G mobile services as a key work area for 2019/20: including a review of the current net neutrality regulatory regime, taking steps to introduce further competition in the backhaul and transmission markets, and the proposed release of spectrum in the 700 MHz and 3.6-3.8 GHz spectrum bands.

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<sup>1</sup> [Proposed Annual Plan 2019/20, Ofcom](#)

6. We welcome Ofcom's intention to understand the regulatory implications of the launch of 5G services in its Proposed Annual Plan (paragraph 3.7).
7. For example, in our view there is considerable uncertainty as to whether potential 5G use cases that rely on network slicing and that are crucial to the business case to deploy 5G will be permitted under the current net neutrality regulatory regime. It is important that operators have clarity before the deployment of 5G networks in the UK on the type of retail and wholesale services and products that will be permissible under the net neutrality regulatory regime.
8. In particular, we note that a case-by-case ex-post approach to the implementation of the Net Neutrality guidelines (i.e. after the deployment of the service) does not provide sufficient business certainty to justify the considerable investments required in 5G networks. We note the contrast with the US where the absence of detailed net neutrality guidelines provides operators the flexibility to test and commercialise different business models.
9. We are, therefore, encouraged that Ofcom will be considering this matter in detail and look forward to engaging with Ofcom on this topic.
10. Measures which promote investment in fibre networks will also be important in ensuring that 5G is deployed as quickly and efficiently as possible. As we have set out in our detailed response to Ofcom's Physical Infrastructure Market Review, Three supports Ofcom's initiatives to encourage alternative infrastructure investment in fixed telecoms networks. The emergence of competing fibre networks offering access to dark fibre for backhaul services will be critical in ensuring that mobile operators' costs are decoupled from the level of traffic on their networks. This will allow operators to market data-intensive 5G services without substantially inflating their costs.
11. In taking forward both its DPA and inter-exchange dark fibre remedies (from the BCMR), Ofcom must ensure that they are fit for purpose for infrastructure competitors to use immediately. This is because both remedies will be critical to mobile operators as they plan their transmission networks in anticipation of 5G. Any delay in accessing the networks of alternative providers will risk the timely and cost-effective deployment of 5G technologies.

## **Secure standards and improve quality**

### *Improving mobile coverage*

12. Both Ofcom and Government are investigating ways to expand coverage of 'good data' mobile services in the UK. To this end, Ofcom is proposing to impose two 90% 4G coverage obligations (with additional requirements on the number of premises covered, new mobile sites deployed and breakdowns within each UK Nation) in the award of 700MHz and 3.4-3.6GHz spectrum earmarked for Spring 2020. It has also published advice to Government on the options for further improving coverage to meet Government's 95% ambition.

13. We welcome Ofcom's indication in its Proposed Annual Plan that, in addition to its proposed licence obligations, it will explore a range of other policy options to improve mobile coverage (paragraph 5.6). However, we do not consider that licence obligations, which will result in two out of the four mobile operators expanding coverage, should be the primary means by which to expand coverage. There are alternative solutions which are more cost efficient and will result in greater benefits to consumers and citizens
14. Two preferable solutions are a shared rural network and, a rural roaming obligation. We urge Ofcom to consider these as alternative solutions to imposing coverage obligations.
15. The mobile industry is currently in discussions to agree on a shared rural network which we expect to cover both partial and total not spots. A shared network would make the investment case more favourable in rural areas but, in some areas, we expect the economics to remain prohibitive. Mobile networks will only be expanded into these areas through the use of public funds. Three considers that this would be an appropriate response reflecting that improving rural mobile coverage is a public priority.
16. Another alternative is a rural roaming requirement. This would also allow all operators to compete for customers in rural areas rather than extending the partial not spot problem, which currently covers 25% of the UK geography.<sup>2,3</sup> It would also avoid the inefficient duplication of mobile networks in the areas of the country which do not have the traffic to support infrastructure competition.

#### *Ofcom's work on mobile spectrum*

17. In Ofcom's Proposed Annual Plan, it sets out several work areas related to mobile spectrum across the 2019/20 financial year.
18. As part of its work to 'Prepare for future awards of spectrum bands as they are cleared and released', Ofcom is currently consulting on the Award of the 700 MHz and 3.6-3.8 GHz band. We welcome the release of additional spectrum which will be crucial to deliver 5G and further improvements to the existing 4G services to UK consumers and citizens. Three will be responding substantively to this consultation.
19. Relating to Ofcom's work on 'Enabling additional spectrum for mobile including 5G services', Three supports Ofcom's efforts to engage internationally to ensure spectrum technical conditions for the priority bands are appropriate for mobile. We also support Ofcom's decision to support the identification of 24.25 – 27.5 GHz, 40.5 - 43.5 GHz and 66 – 71 GHz as priority bands for 5G services at the World Radiocommunications Conference-19 (WRC-19) later this year. We agree that the frequency ranges above 24 GHz offer a significant opportunity for supporting future 5G services, particularly through the deployment of mmWave technology.

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<sup>2</sup> [Connected Nations 2018, Ofcom](#)

<sup>3</sup> If two operators extend their coverage as a result of subsidies built into the 700MHz and 3,6 GHz auction reward then this will result in further accentuating the partial not spot problem.

20. However, there is one notable omission amongst the proposed 5G mmWave bands, namely 28 GHz. It is essential that Ofcom also examines the 28 GHz spectrum band and the case for its use for 5G services.
21. Relating to Ofcom's work to 'Improve mobile coverage (spectrum solutions)', we note that Ofcom is currently consulting on 'Enabling opportunities for innovation', including proposals for shared access to spectrum to support technologies. Three will be responding substantively to this consultation from Ofcom but urges Ofcom to be mindful of the spectrum demands of 5G services when making decisions around shared access. It is imperative that Ofcom considers the medium and longer term capacity requirements of 5G services, particularly FWA, and designs any shared spectrum access framework with sufficient flexibility to enable the most efficient use of spectrum going forward.

### **Protect consumers from harm**

22. Three notes that Ofcom has indicated that protecting consumers from harmful pricing practices is a key priority.
23. Three supports Ofcom's work to have better engaged customers and we look forward to working with Ofcom during this year to achieve its objective in this regard.
24. In particular, we are keen to assist Ofcom in identifying the best ways to adequately protect customers, whilst ensuring that customers continue to enjoy the services that work best for them.
25. The UK mobile market, for example, has high-levels of consumer satisfaction with 91% of mobile contract customers satisfied with overall service provided and 84% satisfied that their service provides value for money.<sup>4</sup>
26. In addition, mobile phone consumers benefit from significant regulatory protections through the General Conditions of Entitlement<sup>5</sup> and general 'horizontal' consumer protection rules<sup>6</sup>.
27. It is imperative that consumers have access to the information they need, at the relevant time, in order to assess the choices available and make informed purchasing decisions. Therefore, we support Ofcom's efforts to ensure this. In particular, we agree with Ofcom that it is important that customers are reminded when their minimum contract period is about to end, thereby prompted to engage with the market and we support Ofcom's proposals on end-of-contract notifications and on encouraging

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<sup>4</sup> [Customer Satisfaction Tracker 2018, Ofcom](#)

<sup>5</sup> The consumer protection rules are in Part C of the General Conditions and include requirements around form and content of contracts (condition C1), to provide consumers with and publish detailed information about their products and services (condition C2), and measures to meet the needs of vulnerable consumers (condition C5).

<sup>6</sup> General consumer protection measures include: the Consumer Rights Act 2015, Consumer Contract (information, Cancellation and Additional Charges) Regulations 2013.

customer engagement. We think this approach is a far more effective means of protecting consumers, rather than any regulation favouring one particular sales model over another in respect of the mobile market.

28. Sometimes not everyone is able to engage effectively, perhaps through disability or some other personal factor that leaves them vulnerable and disengaged. When this happens, it is important that these vulnerable consumers are appropriately safeguarded. We agree with and support Ofcom's proposals to help vulnerable customers and to highlight and eliminate differential pricing practices that impact vulnerable customers.
29. Our concern is that a remedy for vulnerable customers concerning mobile handset bundles will be deployed to all customers. This will have a significant impact on the consumer market and will have unintended consequences.
30. Ofcom's continuing work to ensure consumers can exercise choice includes a project to consider how regulation can help consumers better engage. We look forward to working with Ofcom on this work during this year.