

# Ofcom's Draft Annual Plan 2008/9

## Response by BT Group

### Introduction

Ofcom's draft Annual Plan for 2008/09 identifies the workstreams Ofcom intends to complete in the year ahead within the context of its previously stated three-year strategic framework to "regulate for convergence". This framework includes, among other things, implementing Ofcom's strategy for fixed telecoms as set out in its Strategic Review of Telecoms. BT has considered whether the proposals put forward in the draft Plan align with our view of the key regulatory issues which Ofcom should address over the next year.

Overall, BT strongly believes that Ofcom's Plan should ensure that regulation is always applied appropriately and proportionately to enhance the overall customer experience in communications markets by reflecting the following key principles in its overall strategic approach:

- focussing regulation on all clearly identified enduring economic bottlenecks in communications markets and ensuring relevant products and services are provided on equivalent terms to all downstream players and on fair and reasonable terms that allow providers of these services to recover all relevant costs and make a reasonable return on their investments;
- rapidly removing regulation downstream of the enduring bottlenecks once the upstream regulation has removed any barriers to effective competition in those downstream markets; and
- ensuring that any concerns relating to the consumer experience and consumer protection are addressed through regulation of the industry and not through disproportionate targeted regulation of BT's retail activities.

These principles are broadly reflected in Ofcom's Strategic Review of Telecoms which resulted in BT committing to functional separation and equivalence in the Undertakings. The Undertakings aimed to address concerns with access to enduring bottlenecks by providing a clear framework to incentivise true equivalence between competing downstream players moving forward. This would support the removal of regulation in those downstream markets.

However, BT is increasingly concerned that Ofcom's recent activity – both in terms of prioritisation of work and decisions/recommendations made – has not always reflected these principles. By way of example, BT would highlight:

- delays in the delivery of the market reviews (and the de-regulatory outcomes which should have resulted) which Ofcom stated it would undertake in the Plan for the current 2007/08 year, reflecting the lower priority given to this work over other workstreams; and
- the proposals to continue retail level regulation and extend wholesale charge controls to additional areas put forward in the Business Connectivity Market Review when it was published in January 2008.

Given the above concerns, it is clear that it is not just the content of the Plan and the workstreams it identifies which is important, but Ofcom's ability to manage and deliver those workstreams in a manner consistent with the identified principles both in terms of prioritisation and policy outcomes.

In this context, it is therefore welcome that Ofcom has identified key priority workstreams for the year ahead with a view to ensuring these are delivered. Although BT has identified some gaps in Ofcom's overall work programme (highlighted below), the proposed priority workstreams broadly align with BT's own priority work areas for the next 12 months. The prioritisation of these workstreams provides a much higher degree of comfort that Ofcom will complete its work in these areas as early as possible.

BT is of course actively engaged on the detail of all these priority areas and on other workstreams with Ofcom and will continue to input as appropriate to the relevant Ofcom project teams. However, the rest of this response sets out brief comments on our expectations from the priority workstreams which we consider are of key strategic importance before touching upon areas which we feel are not fully addressed within the draft Plan.

### **Comments on key priority workstreams proposed by Ofcom**

#### **Implementing Ofcom's strategy for fixed telecoms:**

Ofcom has highlighted a number of different workstreams under this heading.

##### ***Implementation of Undertakings: General***

Ofcom identifies ongoing work in assessing how BT has implemented the Undertakings as a priority project. BT recognises that Ofcom will want comfort that key commitments are being met and will continue to engage with Ofcom as appropriate. However, Ofcom needs to avoid the risk of unnecessary intervention in Openreach's commercial activities and plans. As discussed, the Undertakings provide sufficient incentives, which include the necessary behavioural and organisation levers to ensure the right policy outcomes. This should necessarily remove the need for detailed Ofcom intervention over time and Ofcom should continue to focus on assessing whether the expected outcomes of the functional separation are being achieved.

##### ***Implementation of Undertakings: Openreach Financial Framework review***

This is correctly identified as a priority project for the coming year and BT welcomes Ofcom's commitment to take work forward and complete the review as soon as possible. BT understands that Ofcom expects to publish a consultation document on this review in April 2008, and are intending to establish a pricing framework for the relevant Openreach services that would become effective in October 2008. It is critical that such a framework provides the opportunity for Openreach to recover its relevant costs and obtain a reasonable return over the period of any controls.

##### ***Market Reviews and related workstreams***

As noted in the introduction, BT has been extremely concerned at the delays in conducting the various planned market reviews in the current 2007/08 planning year. Our expectation was that each review would reflect the significant changes in upstream access regulation set out in the Undertakings and the impact this has had on the contestability of downstream markets. Significant de-regulation in areas outside the identified enduring bottlenecks is dependent on completion of these

market reviews. In this context, BT is pleased to note that all the outstanding market reviews are identified as priority projects for the year ahead in Ofcom's draft Plan.

- Wholesale Broadband Access Market Review: BT has responded fully to Ofcom's proposals for this market review issued in November's consultation document. Subject to addressing BT's concerns about the 12 month delay to the lifting of existing remedies in the competitive "market 3", BT wants Ofcom to move as quickly as possible to publish the relevant notifications removing SMP designations on BT.
- Business Connectivity Market Review (BCMR): BT is concerned that Ofcom's proposals set out in January's consultation document do not provide the expected reductions in regulation applying to retail markets and wholesale trunk markets and, in fact, propose some unwarranted extensions of regulatory remedies. Among other things, Ofcom's proposals for the retail leased lines and wholesale trunk markets are inconsistent with the recommendation on markets susceptible to *ex ante* regulation published by the European Commission in November 2007. BT will be submitting a full response to the BCMR at the end of March and would expect Ofcom to revisit its proposals in the light of this.
- BCMR charge controls: BT is concerned that the consultation on the charge control remedies proposed in the BCMR may be published before the final statement on the market review itself. This implies that Ofcom may not be able to take full account of the responses that it receives to the BCMR consultation on the proposed SMP findings and/or the need for charge control remedies to be applied in each market. As such, BT believes that any consultation, if required, should only be based on the final outcome of the BCMR.
- Retail Narrowband Market Review: BT expects Ofcom to lift all remaining SMP designations on BT in retail narrowband markets given the steps taken to deliver effective wholesale products and services, equivalence and functional separation. BT welcomes Ofcom's identification of this review as a priority project and encourages Ofcom to commit resource to start the required work at the earliest opportunity to deliver the expected de-regulation.
- Wholesale Narrowband Market Review: This review is also one of the priorities for 2008/09 and BT is keen to see this progressed at the earliest opportunity to begin discussion of the complex issues raised by the migration of voice services to NGNs across the period of this review. BT Wholesale will continue to work closely with Ofcom and NGNuk on this area. BT would also welcome clarity on how and when Ofcom would consider any further charge controls, if appropriate.

### **Preparing for next generation core and access networks**

BT welcomes the inclusion of this workstream in Ofcom's draft Plan for 2008/9 as a priority item.

On NGNs, BT will continue the ongoing dialogue with Ofcom on the issues involved, including discussions on the BCMR, the wholesale narrowband market review and the Undertakings as appropriate. BT's policy in these areas will also continue to be developed in consultation with industry through the Consult21 programme. BT

understands that Ofcom may be considering further consultation on NGN core networks in 2008 and would welcome further information on the issues Ofcom intend to cover.

On NGAs, BT is keen to continue to progress work with Ofcom as soon as possible in order to have clarity and certainty around so-called “legacy” regulatory obligations and an appropriate regulatory framework for new build. BT understands Ofcom is planning to produce a consultation of these issues by June 2008. BT would welcome proposals at the earliest opportunity, but is happy to work toward these later timescales to ensure a stable and enduring solution.

### **Developing Ofcom’s approach to mobile**

BT welcomes Ofcom's announced assessment of the mobile sector. BT will be providing input to Ofcom as appropriate during the course of this project to ensure that it results in regulatory outcomes which support effective competition moving forward to deliver clear customer benefits.

### **Engaging in development of new EU legislation**

BT agrees that engagement on the development of future EU legislation is a priority area and urges Ofcom to engage fully in the development of the new EU legislation following the 2006 Review. 2008 will be a critical year for the passage of the proposed measures through the European Parliament and Ofcom’s contribution is likely to be highly influential. In particular, BT would like to see Ofcom engage in the following activities – via the ERG and other routes – in support of a harmonised approach to regulation across Europe:

- taking a decisive role in persuading its fellow NRAs of the need for equivalence of input, whether or not that involves the imposition of functional separation;
- endorsing the regulatory priorities which underpin the success of pan-European business operators in driving forward the faster adoption of ICT, and thus improving competitiveness of European industry;
- promoting the emergence of converged pan European fixed/mobile offerings; and
- explaining to other regulatory agencies the need for timely national consultation on the options and consequences for NGN and NGA implementation, so as to ensure that technological change is not used as an excuse for re-monopolisation by incumbents.

### **Gaps in Ofcom’s priority projects and other workstreams**

#### **Review of Universal Service and Funding**

BT strongly believes that Ofcom should conduct a review of the obligations and ongoing funding arrangements for Universal Service obligations during 2008/09. Communications markets, the choices available and consumer behaviour have changed significantly in recent years, yet the requirements on BT to provide a Universal Service and fund it alone have not changed at all. BT believes the current

model is no longer viable and will be submitting further evidence to Ofcom shortly in support of its concerns.

### **NTS regulation**

Ofcom intended to publish a further consultation document reviewing the arrangements for 0845 calls within two years of the publication date of the statement "NTS: A Way Forward" which was published on 19 April 2006. Ofcom's Plan does not indicate that such a consultation is, in fact, planned for 2008/09 and BT would therefore welcome clarity on this.

There is also a need for Ofcom to review the NTS retail uplift charge control ahead of the expiry of the current four year control in October 2009. Again, Ofcom's Plan does not suggest this work will take place in the coming planning year, but BT would welcome clarity.

**19 February 2008**