



## **Ofcom's proposed Plan of Work 2020/21**

*TalkTalk submission*

**February 2020**

**NON-CONFIDENTIAL**

This is TalkTalk Group's response to Ofcom's proposed Plan of Work 2020/21, published on 7 January 2020.

## 1 Overview

1.1 TalkTalk supports Ofcom's proposed strategic priorities for 2020/21:

- Better broadband and mobile – wherever you are;
- Fairness for customers;
- Supporting UK broadcasting;
- Ensuring online communications work for people and businesses; and
- Enabling strong, secure networks.

1.2 Each strategic priority encompasses vitally important work that will set the framework for the development of the communications sector over the coming years. We share Ofcom's commitment to achieving good outcomes for consumers and businesses through healthy competition and the adoption of fairer practices in the sector. Our response focuses on the following areas of specific relevance to TalkTalk:

- Promoting investment in full fibre broadband and supporting migration to the upgraded network;
- Working together to ensure fairness for customers; and
- Addressing online harm and ensuring network security.

1.3 We note that Ofcom has a full agenda over the coming year. Since the publication of the proposed Plan of Work, the Government has confirmed that it is minded to appoint Ofcom as the regulator to oversee online harms. It will also be welcoming a new Chief Executive in March followed by a new Chairman later in the year. We look forward to working with the new leadership at Ofcom as it works out the implications of its expanded remit, and how it will balance its new responsibilities against its existing priorities. As noted below, it is important that additional resources are secured to fulfil its expanded remit, rather than diverted from existing regulatory duties.

## 2 Full fibre broadband

2.1 We support Ofcom and Government's ambition to create the right regulatory and policy environment for the widespread roll-out of gigabit-capable broadband as quickly as possible. At TalkTalk, we believe that the nation's interests are best served by the deployment of full fibre broadband connections to ensure our networks are robust and future-proof as bandwidth demand continues to grow. This will not only meet customer demands but will also boost the UK economy and enable the growth of e-commerce. Establishing a framework that supports the further development of competition between network builders to achieve widespread roll-out by more than one player, ensures the pace of roll-out is accelerated and maintained, and encourages early customer migrations, is fundamental to achieving the ambition to upgrade the broadband network across the UK.

2.2 By April 2021, Ofcom expects to conclude the Wholesale Fixed Telecoms Market Review ('WFTMR') and set the regulatory rules that will apply to this market until 2026. We support Ofcom's overall strategic objective to encourage competitive commercial investment in new broadband infrastructure. The review comes at a critical juncture for the industry: competition between network builders is already emerging prior to any regulatory change,

most notably between Openreach and Cityfibre, and also Gigaclear in rural areas. We have serious concerns that Ofcom's proposals to relax regulation of Openreach in 'potentially competitive' areas from the start of the market review period, and to allow Openreach to cross-subsidise its build in 'uncompetitive areas', will discourage new network investment and potentially undermine incipient competition. We are particularly concerned that customers on legacy copper products in predominantly rural and semi-rural areas will face higher bills for their existing services but will be unlikely to receive new network deployment in the market review period. It is not fair to require these customers to pay for broadband upgrades that they will not be able to benefit from. We expect to see full consideration by Ofcom of whether alternative regulatory options, including our proposal for 'adaptive regulation', may better fulfil its objectives than the option it has proposed. Ofcom's evaluation must be based on thorough assessment of evidence and the robust analysis of all options. We will respond in detail to the WFTMR proposals in a separate response.

- 2.3 The policy focus to date has been on how to promote investment in the roll-out of gigabit-capable networks through addressing supply-side barriers to build, but action is also required to ensure rapid take-up of services on the new networks. Over the coming year, we consider that Ofcom and Government must expand their focus to include consideration of how customers will be encouraged to migrate voluntarily to the upgraded networks, and to minimise forced migrations when the existing legacy service is switched off. The investment case for full fibre depends on achieving significant take-up, and early take-up will create a virtuous circle leading to further network roll-out as investor confidence in achieving returns increases. Another crucial part of the investment case is ensuring there is a process for copper retirement to minimise the dual-running costs of legacy and new networks.
- 2.4 We note that the proposed plan includes potential work by Ofcom on "consumer information on gigabit-capable / ultrafast broadband" (p.32) and supporting the Openreach trial in Salisbury, including "using [its] convening power to support the trial in protecting vulnerable customers and users of special services, so that lessons from the trial can support wider investment in new networks" (p.38). We welcome these individual commitments but would also like to work with Ofcom and Government on a more coordinated framework to plan and organise activity to encourage and support the migration to new networks, taking into account the intersection with work on the migration to IP-based voice services. We expect that greater leadership by Ofcom and/or Government may be required to avoid coordination failures as the UK upgrades its broadband networks and commences copper switchover.
- 2.5 We also note that Ofcom will be publishing a report on the overall outcomes of the legal separation of Openreach from BT, which will include an assessment of the benefits to consumers, the impact on the competition concerns identified in Ofcom's 2016 Strategic Review of Digital Communications, and the effect on investment in new networks. We look forward to engaging with Ofcom on its review.

### **3 Fairness and consumer policy**

#### Fairness programme

- 3.1 TalkTalk strongly supports Ofcom's consumer fairness programme. We were one of the initial industry signatories to the six fairness commitments in June 2019 and have been working closely with Ofcom since then on the measures taken to implement these

commitments. Additionally, TalkTalk made voluntary pricing commitments in September 2019 to address specific concerns over the broadband pricing differential and specifically over the prices paid by out-of-contract vulnerable customers. We look forward to working with Ofcom during the next financial year on how to make further improvements, including how to meet the specific needs of vulnerable customers.

3.2 For its fairness programme to be successful, Ofcom must ensure that all providers are held to account against the same standards and there is a consistent, 'one size fits all' approach across the industry. We believe that further regulatory measures are necessary to address the unfair behaviour of some providers to ensure that consumers are protected and that there is a level playing field between all providers. [X].

3.3 Also, we believe that further measures are needed to address the broadband "loyalty penalty" where the voluntary commitments vary quite significantly between providers. [X].

#### European Electronic Communications Code

3.4 In relation to the implementation of the European Electronic Communications Code ('EECC'), TalkTalk will respond separately to Ofcom's proposals in this regard. The proposals are very ambitious and will require providers to make quite significant changes to their systems and processes particularly around the provision of contract information and contract summaries, as well as implementing new customer switching processes. We want to work closely with Ofcom on how we go about implementing these changes against a realistic timescale that will generate the expected consumer benefits as quickly as practically possible.

#### Nuisance calls and scams

3.5 Addressing nuisance calls and scams continues to be an important area of focus for Ofcom and industry. As part of this work, we have developed a proposal to address spoofing of UK numbers, which we are sharing with Ofcom and the relevant industry working groups to gather feedback and agree a way forward. We also look forward to working with StopScamsUK, which is due to launch in March 2020, and other companies to develop and implement a cross-industry approach to tackling scams in the UK.

#### Consumer advocacy

3.6 We welcome the commitment to increase the budget for the Communications Consumer Panel (CCP) to enable it to expand its programme of work and engage with consumer groups. The CCP has produced informed sector analysis and promoted the consumer voice in the sector – for example in creating the Industry Forum on Vulnerable Customers. We support this focus as both an important way to represent consumers, and also to offer advice and best practice guidance to CPs.

3.7 The Department for Digital, Culture, Media and Sport recently consulted on proposals to create a new consumer advocate in the telecoms sector, suggesting that Citizens' Advice is best placed to take on this role. TalkTalk supports reforms to strengthen consumer advocacy arrangements, either by reforms to the current structures or by creating a new statutory body. However, any new arrangements must avoid duplication of activities. At present, there is a risk that multiple bodies could compete to perform advocacy functions – for example operating a helpline or running information campaign – which would cause confusion and inefficiencies. Therefore, it is important that Ofcom's Plan of Work remains

under review and is adapted if needed to ensure it aligns with wider advocacy arrangements.

#### Open communications

- 3.8 We look forward to seeing Ofcom's first publication on Open Communications and appreciate the early engagement with industry on this issue. Our view is that any new requirements on CPs need to be underpinned by robust evidence to demonstrate that they are a proportionate approach by Ofcom to promote the consumer interest. This should be underpinned with consumer research to understand consumer demand, as well as an assessment of how similar data-sharing exercises have worked in different markets.
- 3.9 We caution against a siloed approach to reforms from Ofcom, and suggest that the impact of any Open Communications proposals should be considered alongside the impact of the transposition of the EEC reforms.

## **4 Online harms and network security**

#### Online harms

- 4.1 Ofcom has played an important role in researching and tracking trends in consumers' use of online services, including experiences and perceptions of online harm. In a new and fast-moving policy space, this measured and evidenced approach has been a welcome contribution. We support the continuation of this work and are pleased to see the commitment to work with partner organisations to help promote understanding of how they can protect themselves online. There are a range of expert bodies working in this area – such as the initiative set up by TalkTalk and other CPs, Internet Matters, which provides advice and guidance to parents on how to protect their children online – and Ofcom should look to build on this work, rather than engage in unnecessary duplication. We would be more than willing to share any evidence and learnings from our work with Internet Matters that may be useful as Ofcom develops its work on this.
- 4.2 Since the publication of the proposed Plan of Work, the Government has confirmed that it is minded to appoint Ofcom as the regulator to oversee online harms. We agree with Government that Ofcom has the right experience and capability to take on this role. However, we recognise that this is a considerable extension of its remit and will require a considerable period of transformation to restructure and take on new staff. Therefore, we hope to see further consultation with industry on how Ofcom plans to expand its remit, particularly regarding how it will fund this new work and how the new remit will be balanced against its existing priorities regarding digital infrastructure and the telecommunications market. In our view it is important that there is no reduction in staff resources dedicated to Ofcom's existing regulatory areas when taking on online harms, and Ofcom should therefore plan for an overall expansion of its headcount during this process.

#### Network security

- 4.3 We will continue to work closely with Ofcom and other authorities to ensure a high-level of network security in order to protect our customers. This an ever-changing area that requires continued vigilance and input on the part of all network providers.