

TalkTalk response to Statement of Strategic Priorities for telecommunications, the management of radio spectrum and postal services

March 2019

Executive Summary

TalkTalk is the UK's challenger telecoms company, providing landline, broadband and TV to over 4 million customers. We operate Britain's biggest unbundled broadband network, covering 96% of the population, supplying services to consumers through the TalkTalk brand and to businesses through TalkTalk Business and wholesaling to resellers. In 2018 TalkTalk created FibreNation, an infrastructure company with an ambition to build full fibre connections to 3 million homes. We are currently building out to 100,000 homes in York and in neighbouring Harrogate, Knaresborough and Ripon.

TalkTalk welcomes the opportunity to comment on the draft Statement of Strategic Priorities (SSP) from the Department of Digital, Culture, Media and Sport (DCMS) to Ofcom. The publication of the SSP is an important way of ensuring transparency of the Government's priorities and the relationship between Government and Ofcom.

We support the Government's policy objectives to achieve nationwide full fibre coverage and broadly agree with the strategy set out in the 2018 Future Telecoms Infrastructure Review (FTIR) to reduce costs and barriers to deployment, improve access to Openreach infrastructure and build a supportive regulatory regime. We also agree with the Government's assessment that the telecoms market does not always operate fairly and intervention is needed to serve customers' interests.

While we support the Government's policy objectives, it is essential that the principle of regulatory independence is not undermined by the SSP. Policy-making in the telecoms market has effects over a longer timeframe than the parliamentary cycle, and consistency in policy-making fostered by independent regulation is necessary to ensure telecoms investors can be confident in their investments. An SSP can help to set the objectives of regulation; however, it should not stipulate how these outcomes should be reached or look to influence Ofcom's analysis.

In our view, the current draft SSP is too prescriptive in several areas in specifying particular regulation, rather than setting over-arching policy objectives for Ofcom. Therefore, our response makes recommendations on amendments to the text to ensure it does not encroach upon regulatory independence in the interests of promoting long-term investment.

In particular, we are concerned that the direction included in the SSP document as currently drafted risks unintended and adverse consequences which would undermine the ambition to create "*stable and long-term regulation which incentivises investment*". Our response sets out several issues relating to specific points raised in the document, but our key concerns relate to a misunderstanding of the link between regulation, consumer pricing and infrastructure investment:

- **Linkage of retail price to investment landscape** – The document states the Government’s view that *“promoting investment should be prioritised over interventions to further reduce retail prices”* (para 20). No evidence is provided to suggest why reducing prices will deter investment (particularly before investment is delivered), and our firm view is that this is a misunderstanding of market dynamics; lower prices in the next few years are more likely to stimulate investment than deter it. In any case, this is an empirical question and the language limits Ofcom’s freedom to set regulated prices at appropriate levels, and could lead to higher consumer detriment, as well as reduced investment and weakened retail competition.
- **Pre-emptive deregulation** – Paragraph 22 sets out the Government’s expectation that regulation will not be needed *“for areas where there is actual or prospective effective competition between networks”*. We are concerned that this statement could be read to support the removal of current regulatory standards based on only the prospect of competition, rather than waiting for it to be established and found to be effective.

Any movement to remove price regulation before competing networks are built and available to consumers would be a wholly retrograde step which would undermine investment; removing this level of price protection would have a detrimental effect both on retail competition (as retail ISPs lose regulatory protection and see their market share fall) and on consumers (who could face significant price increases). Erosion of retail competition would reduce the extent of competitive full fibre investment since the scale customer base needed to make investment viable will be reduced. Alternative investment would fall away, and ultimately BT investment would slow as the competitive pressures reduce and retail ISPs have less ability to influence its decisions.

The relationship between retail prices, deregulatory steps and investment incentives can only be understood through robust economic analysis, which the Government has not undertaken. Without this robust evidence, the SSP as currently drafted would be detrimental to investment, inappropriately directive, undermines Ofcom’s freedom of action in the interests of investment and the consumer, and should be amended. Therefore, the Statement should not make any assumptions about this relationship, and references to retail prices in paragraph 20 and on pre-emptive deregulation (para 22) should be removed.

A far preferable alternative would be for Government to recommend that Ofcom undertakes analysis to understand this relationship to inform subsequent decisions about regulation. Ofcom will need to balance any potential gains from such a change in approach – which we believe do not exist – with the cost of a fundamental rewrite of the current regulatory approach and associated impact on predictability and investment stability.

In addition, we hope the Government uses this opportunity to set out its over-arching expectations of the regulatory regime to include:

- 1) Proactive monitoring of Openreach in the round to create a full picture of its behaviour and to deter anti-competitive activity by the incumbent
- 2) Developing and enforcing transparency requirements for Openreach FTTP roll-out to support competition
- 3) Continued oversight of the implementation of DPA by Openreach to ensure the product can be used effectively as part of large-scale network deployments;
- 4) Establishing industry-wide principles for the transition from legacy to new broadband infrastructure; and
- 5) Scoping full fibre switching scenarios and identifying where action is required to support good outcomes for consumers

The Statement should require Ofcom to devise a mechanism to assess how regulation is encouraging investment, which could include devising KPIs to measure competition. These processes will be required to track progress on both the SSP and on fulfilling the Future Telecoms Infrastructure Review. The Statement should acknowledge that the sector is currently in a transition phase from a national monopoly to network competition, and that regulation should reflect this situation.

Relationship between Ofcom and DCMS

We welcome the publication of the Statement of Strategic Priorities as a way of increasing transparency in the relationship between Government and regulator. The processes of public consultation and parliamentary scrutiny are also important in building industry confidence both in the Statement and in Government's own view of the regulatory relationship. In practical terms, the Statement could play a useful role in helping Ofcom make judgments which require decisions between competing statutory objectives, and also in allocating its resources over a number of years.

However, it is essential that Ofcom remains an independent body and that its regulatory determinations are based on its own analysis of the market and the impact of interventions. Telecommunications networks require investment over lengthy periods of time, and therefore stability and certainty is required for investors to be confident of their returns. As we look forward to a period of significant growth in full fibre networks, with several billion pounds of private investment already committed, this stability and certainty is imperative to ensure that plans being devised today can be implemented over the next decade. Crucially, these timelines do not align with the political cycle. The potential for a regulator's strategic priorities to be rewritten every five years or shorter risks introducing uncertainty and disruption to telecommunications companies which could have a negative impact on investment.

Our view is that while it is appropriate for the Government to set high-level objectives and expectations of a regulator, it should not look to influence or pre-determine regulatory processes or decisions. Ofcom must remain impartial in its analysis of the market and able to make its decisions with reference to its statutory objectives. Overly prescriptive recommendations from Government risk blurring the lines of accountability and lead to incoherent and inaccurate decisions, which would have negative consequences in damaging confidence in UK economic regulation and ultimately

hindering growth in the sector. Therefore the Statement should not include any recommendations regarding policy outcomes or processes, but instead focus on outcome objectives.

Section 1: World-class digital infrastructure

1.2 Passive infrastructure

We support DCMS's expectation for duct and pole access (DPA) of "*rigorous and close monitoring by Ofcom*" and that "*all options should be considered to ensure compliance*" if Openreach does not fully implement the requirements (paragraph 17). Cross-industry negotiations with Openreach on DPA have proved to be challenging; Ofcom's involvement was important in overcoming barriers to progress. We consider the 1 April 2019 Reference Offer as a baseline on which to make further improvements through the one-year bedding-in period and as use of the product increases, rather than the final contract. Therefore, we welcome DCMS's language here.

- **Paragraph 17 – No undue discrimination:** We are also pleased to see reference to the requirement for no undue discrimination by Openreach. Ensuring parity between the service Openreach provides to itself and to third parties will be key to a workable product that supports effective competition. Comparative KPIs assessing Openreach's performance are being established to identify potential discrimination and ensure Communications Service Providers (CSPs) have confidence in the product. Industry experience of negotiating and agreeing a DPA product highlights the challenge of ensuring new operators will be able to compete with Openreach on equal terms. Openreach is required to ensure that operators are able to access its assets, but is also determined to compete with alternative networks. This conflict creates skewed incentives which undermine confidence amongst potential competitors, and these concerns have led TalkTalk and others to insist on a strict regime of KPIs and SLAs to ensure transparency and monitor Openreach behaviour.

These lessons need to be applied more widely to Openreach's activities, and Ofcom should both establish what good looks like by creating KPIs and targets, and also set up a monitoring process to ensure that it is able to track Openreach performance. This process needs to be transparent to ensure the product gains CSP confidence. The final Statement should require Ofcom to set KPIs on DPA and to assess Openreach performance against these KPIs in its wider assessment of Openreach behaviour.

- **Paragraph 18 – Dark Fibre Access:** We disagree with the inference that dark fibre access (DFA) should only be available in those areas where DPA is not available or is not effective. Whereas dark fibre is viable and can quickly deliver significant innovation and investment benefit for all leased line circuits, network competition using DPA is only viable for a subset of circuits and even then only through incurring duplication costs and raising wholesale prices which leads to weakened retail competition and higher retail prices. DPA is also much slower to implement than dark fibre, potentially taking months in a market where many customers require connections in short timeframe. Thus, dark fibre delivers greater overall investment and consumer benefits than DPA. This dynamic is very different to the situation

for residential/broadband services where little full fibre network exists today – in the business market a good quality fibre networks already exists, and regulation must be designed to leverage this asset.

Therefore, we think this reference should be removed in the final SSP. The document should instead set an expectation on Ofcom that it should assess how various forms of passive access (DPA and dark fibre) could support the interests of leased line customers, with Ofcom then required to determine the remedies that enable most efficient use of existing infrastructure to enable competition. Our firm view is competition is best served with both DPA and dark fibre available as products.

1.3 Regulation that encourages network investment

TalkTalk supports regulatory change to encourage network investment. The current regulatory framework is based on one incumbent provider with a national legacy network; as we move to a new, more fragmented system with greater competition between providers, regulation will need to adapt to support and reflect this change.

However, we are concerned that this section of the Statement is based on incorrect presumptions and is too prescriptive in some important areas. While we broadly support the Government's desired outcomes, several of the assertions made here risk influencing Ofcom's work before it has carried out the necessary analysis. The SSP should reiterate the Government's policy objective of a competitive, nationwide fibre roll-out and set expectations of how Ofcom can contribute to this objective. However, it should not pre-empt the outcome of Ofcom's market review processes. If it does, it risks both interfering with regulatory independence and creating poor incentives for continued network investment, which will damage the Government's ambition for a competition roll-out.

We will assess the proposals in this section in turn:

- **Paragraph 20 – prioritising investment over retail price reductions:** We disagree with the implicit assertion made in this paragraph that higher legacy retail (and by implication wholesale) prices lead to more fibre investment. Neither the Government nor Ofcom have produced any evidence to suggest that investment in new FTTP networks has been hindered due to reductions to FTTC retail price, or would be in the future. On the contrary, Openreach's prices have been well in excess of its costs for over a decade: BT made around £23.5 billion profit from regulated services over the period 2006 to 2016, of which £9.7 billion was over and above the determined cost of capital.¹ However, these returns did not lead to FTTP investment as Openreach was content to sweat its copper asset, with little incentive to invest for the benefit of consumers. It was only when Ofcom reduced wholesale FTTC prices in recognition that the initial fair bet had exceeded and that excess profits were no longer justified, combined with pressure from customers to see investment, that Openreach moved and increased its plans for FTTP roll-out. There is sound economic logic

¹Frontier Economics, *The Profitability of BT's Regulated Services*, 28 November 2016

underlying this observation – as legacy prices (e.g. copper, FTTC) fall the margin between the (unregulated) FTTH price and legacy prices widens increasing the viability of Openreach FTTP investment.

Higher legacy prices for the incumbent can also reduce fibre investment by new entrants. The viability of new fibre investment is dependent on having a scale base of non-BT customers which can be quickly migrated to the new network. If current wholesale price regulation is removed or relaxed, retail ISPs will see wholesale costs rise, squeezing their ability to compete with BT Retail and losing market share, which reduces the ability of new providers to meet the take-up levels their business models require, which will ultimately limit new investment and scale.

There are some circumstances in which higher legacy wholesale prices can stimulate altnet investment. For instance, once an altnet investment is made higher (post-entry) legacy prices will allow higher returns and so increase the viability of that investment. Thus, a commitment to higher prices once entry has occurred will stimulate altnet investment. However, until that point, higher wholesale prices would have a detrimental impact on network roll-out.

Furthermore, Ofcom's approach to price regulation is based on its principal duty to further the interests of citizens and consumers in relation to communications matters, as set out in the Communications Act 2003. Government views on the future of price regulation risks interfering with this duty and constraining Ofcom's ability to regulate markets to ensure consumers receive adequate protection.

We understand from discussions with DCMS that this reference is not intended to lead to price rises, but rather to help Ofcom prioritise between competing priorities. Nevertheless, DCMS's implicit assertion that higher legacy prices will stimulate fibre investment is crude and, in most cases, incorrect and its inclusion here risks distorting Ofcom's approach to price regulation. Accordingly, this reference should be removed from the final Statement (or qualified by, for instance, suggesting that Ofcom should assess whether, and in what circumstances, higher legacy prices can be used to stimulate fibre investment, or whether lower legacy prices are more likely to have a stimulating effect).

- **Paragraph 21 – competition:** We welcome DCMS's expectation that Ofcom should be *"vigilant and use its full range of powers to address any anti-competitive behaviour"*. However, we want to see the Government be more awake to the threat that potential anti-competitive behaviour by Openreach presents to competitive full fibre roll-out. While some degree of overbuild is likely to happen without anti-competitive intent, investors in new networks need to have confidence in the regulator's ability to detect and act against anti-competitive behaviour whereby Openreach intentionally alters its build programme to target altnets' planned build. To date, while both Ofcom and Government have sought to provide reassurance that this is being considered, it has not been sufficient to allay concerns.

To establish this confidence throughout the sector and the investment community, it is essential that Ofcom prioritises this work and sees it as a key function of a regulator in the transition to full network competition. Ofcom must have a clear, defined role to monitor Openreach behaviour and, where necessary, investigate specific actions. This role should be communicated across the sector and subject to initial consultation.

TalkTalk's view is that Openreach should be required to submit its planned build programme for a defined period (for example five years). If Openreach build projects deviate from the relevant plan (or when a new plan deviates from previous plan) by more than defined thresholds, Openreach must provide satisfactory explanation to Ofcom that the change was not anti-competitive. Based on this explanation, Ofcom should consider whether to launch a formal investigation.

Therefore, this recommendation should be expanded to require Ofcom to set out how it will fulfil this role to monitor behaviour and determine any anti-competitive action on an ongoing basis, subject to consultation with industry.

- **Paragraph 22 – five-year market reviews:** We are not convinced of the case for five-year market reviews at this time. While longer reviews may be appropriate in the future, we are at a transition point for the industry with rapid and unpredictable change expected and there is a risk that regulation is poorly adapted to the changing circumstances. Therefore, shorter review periods would be more appropriate as it would give Ofcom greater flexibility to adapt its regulation in order to respond changing market conditions. In particular, levels of competition are likely to change significantly over the next few years as FTTP investment is rolled out. It is, in fact, exactly the wrong time to be shifting to longer market reviews.

If five-year market reviews are adopted, Ofcom must assess the use of different mechanisms that allows the impact of regulation to modify in response to changing circumstances over the period. These changing circumstances could include new entrants to the market, the emergence of new product sets and take-up rates period. In an adaptive model, Ofcom would be able to review how developments have changed market dynamics in distinct geographic areas, which would lead it to review its pricing structure outside of the usual market review process. The conditions could be passing certain thresholds which indicate that the region is competitive, for example a level of homes passed and ready for sale by a number of different FTTP providers. This would not lead to increased uncertainty as the principle would be well-established and any changes would be consulted on and flagged in advance to give business sufficient time to adjust, but would reflect market conditions, reducing prices where appropriate without exposing consumers to higher levels of detriment.

Failure to do so risks regulation becoming insensitive to reality leading to over and under-enforcement. Government states that its ambition is to create stable and long-term regulation to encourage investment; however, obsolete and inappropriate regulation which

fails to respond to a changing market will not achieve market confidence. Therefore, this ability to adapt and evolve is necessary to give the market certainty that regulation can evolve and respond to market developments to remain adequate.

The SSP should be amended to require Ofcom to ensure its regulatory approach can respond to market developments to remain relevant, rather than directing Ofcom to move to five-year reviews.

- **Paragraph 22 – regulatory forbearance:** The draft SSP says: “*It is the Government’s view that regulatory forbearance, where appropriate, should be considered by Ofcom ...*”. We support the expectation that regulation should only be to address competition concerns and ensure the interests of consumers are safeguarded. However, we are surprised to see this view expressed in these terms in the SSP, as it reflects Ofcom’s current regulatory approach and is therefore not expected to change. Ofcom can only apply regulation where robust market analysis finds that Openreach has Significant Market Power (SMP) and that a regulated remedy is required. Ofcom is unable to act without this assessment and in recent years companies have successfully challenged Ofcom’s processes and subsequent regulatory determinations in the courts based on its analysis.

It is not clear why the principle of regulatory forbearance is expressed in this document: Government has not provided any argument for why *additional* forbearance is appropriate, nor how Ofcom should amend its regulatory approach. Its inclusion – without broader context of how it applies to Ofcom’s regulatory determinations – risks undermining Ofcom’s own processes, and therefore it should be removed in the final draft.

- **Paragraph 22 – local market conditions:** We support the expectation that Ofcom should consider market conditions as it sets regulation and that in some cases this will mean a geographically differentiated approach to wholesale regulation.

DCMS has indicated that this section is only relevant to future regulation of new, full fibre services, and should not be read as enabling relaxation of current price regulation. We welcome this clarification. This section should be revised to make it clear that there is no expectation that current price regulation should be removed. Without this clarity, there is a concern that it could be interpreted to offer Government support for regulation to be relaxed or removed in areas where there is only “*prospective effective competition*”. This approach would slow network roll-out and ultimately jeopardise the Government’s policy ambition. Relaxing regulation (such as allowing higher legacy prices) will – as we described above – reduce incentives for BT investment and, if it occurs before investment is possible, the viability of competitive investment. Thus, rather than relaxing regulation based on the prospect of competition Ofcom should only relax regulation once investment is in place.

In addition to risking severe consequences for investment and competition, we consider this section to be another example of overly prescriptive drafting by DCMS. As phrased, this

statement pre-empts Ofcom's decision, rather than setting expectations of decisions which should be made on the basis of its detailed empirical analysis. It also does not reflect Ofcom's current statutory duties to protect and promote the consumer interest.

Therefore, the Statement should require Ofcom to consider how its approach to regulation should evolve in light of differences in local market conditions. All conjecture about future decisions on pace of relaxation, the emergence of market power and the interaction between FTTP pricing and regulated superfast pricing, should be removed.

- **Paragraph 22 – fair bet:** We support clear guidance from Ofcom on how it will approach determinations on a fair bet in future regulated decisions. This would help provide certainty to investors on future regulation. This work should be consulted on to allow industry to engage with Ofcom on this issue.
- **Paragraph 22 – Openreach transparency:** We welcome the pledge to work with Ofcom on Openreach transparency; however, we are disappointed that DCMS is not clearer in its expectations. In the FTIR, DCMS correctly recognised the role that greater transparency around Openreach's build plans could help increase the confidence of investors in alternative networks. Specifically, it said that transparency would allow alternative network operators to choose to compete head-to-head with Openreach, or to allocate capital to roll out in other areas. Since then, TalkTalk – along with other alternative network investors – has stressed the need to ensure these transparency measures are robust, both to inform our own decisions about network roll-out, and also to ensure that Openreach behaviour can be effectively scrutinised for predatory overbuild (whereby Openreach changes its build plans to target areas where altnets have announced they are building, thereby deterring competition).

We note that Openreach recently published an update on its proposals to share a 12-month forward view of where it intends to start building and the number of exchanges in plans to connect in these locations over a 24-month period. We welcome the transparency update from Openreach. However, greater transparency is required in order to fulfil DCMS's objectives.

As discussed earlier, TalkTalk's view is that Openreach should be required to submit its planned build programme over a defined period (for example, five years). This information should give visibility of plans at a granular level (for example an area of maximum cities/towns and natural geographical boundaries should be respected). It should make commitments to specific exchange locations with more than three months' notice in order for alternative network providers to take account of the information provided within their own build plans. These plans should either be published in full, or if there are legitimate confidentiality constraints on this approach, should be submitted to Ofcom for review.

The SSP should be amended to require Ofcom to set out its approach to collecting information from Openreach, and also how it plans to monitor behaviour on an ongoing basis. This should include Ofcom being required to give a view of desired outcomes (KPIs) for Openreach's behaviour and action to demonstrate how Ofcom will drive this change.

- **Paragraph 22 – Co-investment arrangements:** We support the Government's broad expectation that Ofcom should help to facilitate co-investment arrangements where appropriate. Ofcom should set out principles it will use to inform this work and should update on this work as it evolves.

1.4 An 'Outside In' Approach to Deployment

We welcome the Government's statement that it "*will work with Ofcom to ensure effective alignment between the USO programme and our longer-term connectivity ambitions.*" (paragraph 25) As the Government takes forward the Rural Connectivity Programme, clarity is needed on how this will align with delivery of the current Universal Service Obligation. Duplication of subsidy in certain areas, and the funding of assets which will soon become redundant, should be avoided. Therefore, close alignment between Ofcom and DCMS will be important.

1.5 Switchover process

We welcome DCMS's view that switchover should be an industry-led process, and also the view that new networks should have suitable 'entry level' products at prices similar to those provided on copper networks. This entry level pricing is an important principle to ensure consumers are not penalised by the move onto new networks.

TalkTalk's view is that Ofcom needs to have a leadership role to consider scenarios for the switch to full fibre providers, including regulatory, technology and commercial challenges, to identify where further action will be required to ensure good outcomes for consumers. This work should include establishing industry-wide principles on the transition to new infrastructure, including engaging with operators at an early stage on future regulation of legacy assets. This early engagement and transparency will be important to ensure certainty for CSPs. Therefore, we welcome the reference to protecting consumer interests in discussions on cross-platform switching.

However, the statement that the Government "*expect ISPs to take-up and promote newly available fibre products to drive consumer take-up*" (paragraph 27) should be removed. Migration onto new networks is a commercial matter between ISPs and network providers, including Openreach and new network providers, and will be dependent on negotiations between both parties on price, volume commitments, timing etc. Therefore, it is inaccurate to infer that ISPs have sole responsibility for driving consumer take-up. This reference should be removed in the final Statement.

Finally, this work on switching scenarios must be considered alongside other consumer work on switching, including any work related to the Consumer Green Paper and also in transposing the

European Electronic Communications Code. Ofcom should take a collaborative approach to this to ensure that all issues are considered together, rather than taking a siloed approach.

1.6 Mobile and 5G connectivity

TalkTalk is withdrawing from the provision of mobile services, and therefore we have limited comments on this section. However, we support Government's identification of the potential role of different infrastructure models, such as neutral hosts, in promoting competition and investment in network densification and extension to rural areas. We believe the SSP should specifically require Ofcom to investigate the potential for different infrastructure models further and how it could support the development of models that will drive greater coverage.

1.7 Spectrum management

We broadly support the Government's strategic priorities for spectrum management. In particular we welcome the Government's recognition of the importance of Ofcom supporting spectrum sharing through flexible licensing models to drive innovation.

1.8 Convergence between Full-Fibre and 5G networks

We agree that fibre networks and passive infrastructure are provisioned to meet the demands of 5G network densification, including sufficient backhaul capacity to meet data demands. As we discuss earlier in the document, our firm view is that competition is best served with both DPA and dark fibre available as products, and increasing convergence will increase demand for dark fibre for backhaul services. Therefore, this text should set an expectation on Ofcom to assess how various forms of passive access (DPA and dark fibre) could support consumers' interests rather than positioning dark fibre as an alternative when DPA is not available. Ofcom should be able to determine the remedies that enable most efficient use of existing infrastructure to enable competition based on its detailed analysis.

Section 2- Furthering the interests of telecoms consumers

We recognise the Government's assessment that customer experiences in the telecoms market are *"lagging behind that of other essential services"* (para 45) and Ofcom's finding that *"consumers often struggle to engage with, and navigate, a complex market, and suffer unfair practices and poor quality service as a result."* (para 47).

For too long, telecoms providers have exploited customer inertia and loyalty to make excess profits. Companies rely on tempting offers to new customers, not available to current customers, and then once those deals expire, prices are increased and loyal customers pay significantly more than new ones, often without realising due to a lack of communication with customers.

In 2016 TalkTalk introduced its fixed low price plan (FLPP) offer to customers, becoming the first ISP to commit to no broadband price rises over the course of a contract. We did not restrict these new deals to new customers: rather, we encouraged our existing customers, who often paid higher prices, to switch and save money. That meant we effectively lowered prices for millions of existing

customers to bring their bills into line with new customers. We continue to offer FLPP and will allow customers to leave their contract early to recontract with us at a lower price if they wish to. As a result, the majority of our customer base (circa 70%) choose to be in contract.

Caution is needed when discussing “loyalty penalties”. Some customers prefer the flexibility of not signing a contract, and thus being able to leave a provider at any stage without being liable for early termination fees. For instance, renters who plan to leave a property when their tenancy expires in 3 months might reasonably decide not to re-sign to a 12 month broadband contract. In that case, their bill price is higher, as we reward the loyalty of customers who commit to us by signing contracts which spreads up front cost over a longer period. Typically, the longer the customer commits for, the greater the discount available. However, what is essential is that operators are transparent about their pricing, and that all customers make an active choice about their contractual status, rather than being locked out of best deals or intentionally allowed to roll-out of contracts.

Therefore, we welcome the direction in the SSP which states clear support for intervention to protect the consumer interest, and which would see Ofcom increase its understanding of pricing structures so that it is able to make targeted interventions to benefit customers. We make specific points below:

- **Paragraph 52:** While we welcome the Government’s support for the CMA’s findings on protecting customers, the Government should not pre-empt Ofcom’s own research and conclusions on price interventions in the telecoms market. This section should be amended to state the Government’s support for the CMA’s findings and to require Ofcom to take forward the recommendations in the telecoms sector. This workstream should include an analysis of consumer detriment at present and a consultation on future plans, including any additional powers where required.
- **Paragraph 53:** We support this recommendation to address the growing gap between deals for engaged and less engaged customers, which should include the expectation that Ofcom should conduct analysis of current pricing structure and set out proposals for reforms, and should take forward the relevant recommendations from the CMA.

Our view is that DCMS should set this as an open-ended expectation on Ofcom, rather than specifying particular conditions such as vulnerabilities. It is essential that pricing decisions are looked at in the round, so that all consumer detriment is considered and that any potential remedies are applied widely for greater consumer benefit. There is a risk that if regulators pick and choose specific instances of harm, some groups will not feel the benefit of regulatory intervention, and could even see consumer detriment increase in those areas as companies seek to maximise profit where possible to offset the costs of new regulation. Therefore, we advise removing the final clause, beginning “*which include..*”

TalkTalk’s view is that Ofcom should be bold in considering what interventions could benefit consumers and prevent exploitative behaviour, for example setting a maximum difference

between in and out of contract pricing or even banning these price differences, requiring providers to charge the same for consumers in and out of contract.

- **Paragraph 55-6:** We support Ofcom's work on data collection to inform its policy work and the Government's ambitions on data portability, as we indicated in our response to the Consumer Green Paper consultation in 2018.

Data portability represents a new way for consumers to understand and experience essential services. To have a real impact on consumer experiences of telecoms, it is important that DCMS and Ofcom have clearly outlined their shared ambition when it comes to consumer engagement. With this vision, policy-makers can then consider the role that data portability could play in delivering this ambition. Ofcom could play a key role here in researching the possible benefits of data portability, and also working with other regulators to understand learnings from other sectors, including from the Open Banking initiative and the Pensions Dashboard.

We would note the differences between telecoms and other sectors. While both energy and banking see charges based on usage (for example per unit pricing in energy or overdraft charging), telecoms is increasingly removing usage caps, with most broadband packages uncapped and mobile data increasingly so. Therefore usage patterns are generally much less significant than in other sectors.

- **Paragraph 57:** We welcome Ofcom-led work to consider consumer understanding of different types of broadband services and their ability to make informed choices. As more ultrafast services become available, it is appropriate to consider how product sets are described and communicated to consumers. This work should build on previous investigations into this issue, including those referenced in this paragraph, to consider customer understanding of the market, rather than focusing on one particular product set. The work should be undertaken in collaboration with CSPs to ensure any outputs are practical and workable, and lead to greater customer engagement. There is a risk that any changes could increase consumer confusion as uncertainty as both legacy and new generation products co-exist, and therefore any reforms should also consider take-up rates so that reforms are introduced when products are widely available.
- **Paragraph 58:** TalkTalk has long supported efforts to reform the switching process to make it quicker and easier for consumers. Therefore, we welcome further work from Ofcom on this to ensure that consumers are able to engage with the market and switch services with ease.

As we mention earlier, this work must be aligned with wider work on cross-platform switching, as well as any reform required by the European Electronic Communications Code.

- **Paragraph 59:** We support Ofcom's work on vulnerable customers and welcome clarity from the Government on desired steps and outputs. Our view is that a prior step is required, and

that Ofcom should define vulnerabilities and how they apply in the telecoms sector. This information is needed to inform any subsequent work on policy interventions, including on implementing the Consumer Green Paper.

Section 3: Cybersecurity

TalkTalk supports Ofcom's role in monitoring companies' cybersecurity programmes. Our teams have found its power to convene and lead helpful in industry-wide discussions. We support Government's direction to Ofcom on these issues and the work recently outlined in Ofcom's annual plan.

Section 4: Postal services

We have no comments to make on this section.