Q1 Chair: Good morning. This is the Committee’s annual session where we consider the Ofcom annual plan and report on accounts, and I would like to welcome the chairman of Ofcom, Dame Patricia Hodgson, and the chief executive, Ed Richards, for whom this may be a final appearance, although possibly not. Just before we start on that theme, I know that Patricia would like to say a few words.

Dame Patricia Hodgson: Yes, I did want to mark the final appearance in relation to the annual report, certainly, to say how sorry the board is that we are losing Ed. He has been with the organisation since it started. He has been chief executive for eight years, so we do understand that fresh challenges occasionally beckon. What I would like to say really is that Ofcom under his leadership has had a number of striking successes. Obviously, it is operating in a sector that has its own enormous dynamism as a result of technological change—the innovation across communications and broadcasting—and over the period of Ed’s incumbency the improvement in the range of quality and services has been terrific.

Ofcom can, I think, take some credit for the focus that it has placed on competition and for the way scale competition has contributed to that improvement in range of services and has kept and brought costs down very considerably for the average family in both broadband services and mobile phones.

I shall very much miss him. I have enjoyed the opportunity to work with him. He does leave us with very strong group directors and strength and depth in our teams. We are engaged in the process of finding a new chief executive and we are determined to continue the standard that Ed has set.
**Q2 Chair:** Thank you. On behalf of the Committee I endorse those comments and also say that we have gratefully appreciated the constructive and positive relationship that this Committee has always had with you while you have been a chief executive. We wish you well in the future.

**Ed Richards:** Thank you.

**Q3 Chair:** Can I start on the question of the transition? It does appear as if there is going to be a gap between Ed’s departure and a new chief executive arriving. How long do you anticipate that gap is going to be?

**Dame Patricia Hodgson:** We hope to minimise it. As you will have seen, the advertisement closed last week. Head hunters are in the process of bringing together the applications. There will be a long list and a shortlist process, and we hope to appoint in the new year. If there is a transition of a few months we have tried-and-tested procedures for acting in Ed’s absence and there will be an acting chief executive.

**Q4 Chair:** You refer to the strong team, but is it not also the case that your very long-standing competition director left in May and the new one is only just arriving now? Therefore, you will have at the very top of the organisation in what is a vital area an absent chief executive and a very new competition director. Are you concerned that that is going to weaken Ofcom at that time?

**Dame Patricia Hodgson:** Not, fortunately, in the light of the individuals involved. As I said we have a very experienced team all round. We have excellent arrangements for acting chief executive. The gentleman who is starting was delayed because of extracting him from his previous employment, but he is a most outstanding person in his field. I do not know if Ed wants to add, because he did the selection process.

**Ed Richards:** Yes, that is absolutely right. Jonathan Oxley, who is joining us shortly, has been working for many, many years in the communication sector as an economist, so his experience is absolutely perfect for us. It means that he will not be arriving in November and having to get up to speed from nothing. He is very experienced in the sector and has worked in exactly the relevant areas. We feel we are in a very strong position there. His team in that competition area, which is crucial, is very stable, settled and extremely high quality.

It is a good point to ask, of course, but I think we can look forward in that area with some real confidence.

**Q5 Chair:** It is the case that before the end of the year you are likely to be publishing what some see is an absolutely critical decision about competition in the wholesale telecoms market, the fibre margin squeeze test. Are you confident that he is going to be able to oversee that, and that you can stick to the current timetable?

**Dame Patricia Hodgson:** May I just say a word before Ed answers that? The board takes a close interest in this particular issue, as in many issues that will cover the transition.
**Ed Richards:** To add and build upon that, it is a good example of how the transition will be managed, because Jonathan will be in place by the time we make that decision. He will rapidly get up to speed. He is familiar with the issues already, of course. I will be there right until we take that decision, so that overlap, working very closely with the board, is the way we will do it.

It is of course an extremely important decision. It is the second of what will probably be three important decisions in that area, and, as you will know, there are polarised views about it in industry. I think it is well known, and BT repeated their view at their results the other day, that in their view for us to take any steps in this area would be wrong as a matter of principle. They believe they have made an investment in fibre, which is a risky investment, and therefore for us even to propose or conclude an ex ante margin squeeze of any kind that is beyond ordinary competition law would be wrong. On the other side of the debate there are companies such as TalkTalk, but others as well, who feel that we should go a long way towards directly regulating BT in this area. I think the truth here is what we need to do is weigh up the arguments on both sides, and we need to strike a balance that meets the objectives that we have set for some years now, which are to both incentivise and ensure that we have the investment that the country needs to ensure that superfast broadband is rolled out across the country, but at the same time to retain the competition that Patricia touched upon in her opening remarks, which has brought such substantial benefits for the UK consumer, both residential and business. It is that balancing act that is at the heart of the decision we will make between now and December.

**Q6 Chair:** We may come back to the competition aspects in a little while, but just before we leave the handover arrangement, some of the more suspicious and cynical minds have suggested that this might provide BT with an opportunity to suddenly produce several filing cabinets’ worth of new submissions at the last minute when Ed is on his way out and Jonathan has not really got his feet properly under the desk. You do not think there is a risk that this may lead to delays of that kind?

**Dame Patricia Hodgson:** I could not possibly comment on that theory, but I can say that the need to make sure there is strength and depth on every conceivable issue in this area has occurred to us.

**Chair:** Very good. Thank you.

**Q7 Jim Sheridan:** The communications market has changed over recent years with the explosion of social media—Google, Facebook, all these people—but as I understand it they are exempt from regulations that other providers are subject to. We heard just this morning that the head of GCHQ has expressed concern about Google and other people being exposed to global terrorism and how global terrorists are using social media to carry out their activities.

**Dame Patricia Hodgson:** Could I start with a general comment and then pass over to Ed for the detail? I think it is certainly the case that there has been a struggle to keep up with this shift to the use of social media. On the most extreme abuses of it—the use of it for terrorism or illegal pornography—there are arrangements whereby the Government can categorise that material
and issue takedown notices, it being a criminal offence and outside our field, but there are arrangements. Where very great difficulties occur is material that is on the cusp—that does not fall very clearly under those arrangements—and Ed can talk in more detail about that.

**Ed Richards:** It is a very complex area that we think about a lot. It is absolutely true to say that our regulatory remit does not reach those areas in most respects. Nevertheless what we have found over the last few years is that people of all kinds, from that world and from the traditional, regulated world, want to come to talk to us about it, because everybody is trying to find their way forward in this context, both commercially and from a regulatory perspective. There are at least three issues here. One is the security issue, which the new director of GCHQ touched upon this morning. Then there is the content and, in a sense, citizen protection issues, which are things like pornography, bullying and those kinds of issue. Then there is a wholly different set of economic issues as well that we do tend to get involved with and those are concerned with things like net neutrality and issues of that kind.

In a sense, one can pursue it in all the different ways. I would say at the moment we have a much clearer sense collectively, both within Ofcom and within the competition authorities across the UK and in Europe who we have talked to a lot about this, about the economic issues. The first of that list, so in other words security issues, is probably the furthest away from our domain. The area where it is most difficult and where people are exploring, and we for sure are involved in discussions from time-to-time, is that area of what goes over these networks and to what extent we are as a society comfortable with the world that is creating, particularly in relation to children.

**Q8 Jim Sheridan:** Why are they exempt from regulation? Do you agree with the new director of GCHQ that these other people could do more to protect us?

**Ed Richards:** They are exempt from regulation because we only regulate licensed broadcasters and they are fundamentally not a broadcaster. The nature of their media or medium is completely different and until Parliament decides that a formal regulatory remit needs to extend into that world we will not regulate them, and it is as black and white as that at the moment.

I do not think it would be right for us to give a view on the GCHQ—Robert Hannigan’s—remarks. We do not know enough about the concerns he has and the interaction he has with the technology companies. At one level what he is saying is clearly right, in the sense that social media are being used by all sorts of different communities and it clearly includes terrorist and jihadi communities, and therefore they are part of the way in which groups like that communicate. What I do not think we can comment on is where the balance is struck between the powers of GCHQ and the Government more generally with those technology companies.

**Q9 Jim Sheridan:** I can understand you say it is up to Parliament to legislate to regulate these bodies, but we have had Google in front of us before and they do not take their social responsibilities all that seriously unless they
really have to. Would you suggest that whatever Government is in power should legislate to control these people?

**Ed Richards:** It is fair to say that there are social responsibilities that come with media that are as prevalent and as significant as social media have become. That was not clear when they began, but today we can see that two or three of them in particular are here to stay, and whether it is one particular company or another company that replaces them, the form of communication and interaction that social networks enable are here to stay. So in that context, with that level of significance, it is absolutely right to ask what society should expect of those organisations as responsible companies and with an impact on society.

**Q10 Jim Sheridan:** Finally, you may recall a few months ago Facebook were carrying out some sort of research on people’s mood swings and so on, but they were doing this without the people knowing it was happening to them. That cannot be right, surely?

**Ed Richards:** That is a privacy issue and an issue concerned with the relationship between Facebook and what Facebook users have signed up for. So, again, at the moment that would be outside our remit and the information which—

**Q11 Jim Sheridan:** But would you agree there is a need for some sort of control over these people?

**Ed Richards:** If I ask myself the broader question—say, would I be concerned as an individual and citizen about that kind of issue?—I think everybody has to be. Everybody wants those sorts of relationship to be managed in a proper way with the consent of the user in an environment of trust and clarity. There is no doubt that one of the problems or challenges in this area at the moment is this huge gap between what is specified in the terms and conditions that we tend to all click “I accept” on as quickly as that, and what the individual user knows they are consenting to. The clearest manifestation of that problem is in the privacy issue. What have I agreed to let this company use my data for, in what ways? There is a huge debate that is raging on that. It does feel to me that we are not in the right place as a society, is the direct answer, in the UK and Europe. The reason it does not feel to me that we are in the right place is because I do not think this area is characterised by high levels of trust and consent between consumers and companies. In a really healthy environment that is what would characterise it. We have a way to go before we reach that, and until we do there will be incidences of the kind that you describe.

**Q12 Paul Farrelly:** A supplementary on that, Ed. One of the seven areas in your current year’s plan that is a priority for Ofcom includes work towards online protection of children. Therefore, you must bear some costs in relation to that work that is looking at Google, YouTube and Facebook that you cannot recover because they are outwith your licensing system, unless these people voluntarily contributed to your budget. Is that a satisfactory state of affairs?
**Ed Richards**: What we have done with that work is position it in the broader context of the evolution of content protection generally. While it is true to say that there are the tech companies coming from this direction with no broadcasting experience we also have the broadcasters on this side going in exactly the opposite direction towards the tech world and the online world and entering the online world. Many of them, or almost all of them, are no longer exclusively broadcasters. They are now on-demand providers. I know as a particular example to really animate that point is the BBC, we gather, is proposing to remove BBC Three as a broadcast service and essentially make it an on-demand service. The two worlds are moving together and we felt that it was incumbent upon us, and we were asked by the Government to do work on this, to help move the debate about what protection in that fully connected world would be like.

We are doing that on the basis of our current set of charging principles—that is right—and therefore the burden for that will fall on the range of content providers and/or networks that we charge at the moment. If we did not feel that was appropriate we would have to transfer that to the Government and the Government would have to fund that.

**Q13 Paul Farrelly:** So it is not a major issue at the moment?

**Ed Richards**: It is not a huge area of our activity because it is at the edge of what we do. If it became a very substantial part of what we did then the kind of issues that you are describing would, of course, arise. That is inevitable, because you could not sustain a position, as I think you are intimating, where one group were being charged for something that was relevant to a wider community.

**Dame Patricia Hodgson**: If I could make a couple of observations, going back to Mr Sheridan’s question. As Ed indicated it is quite obvious that social practice is evolving very quickly, and the services available, the way they are used and concerns arising in society as a result are evolving very quickly. We have noticed that the criminal framework that I began by talking about has moved quite fast and there are now discussions about that in relation to serious pornography. As a result of being asked by the Government, we talked to the online world and to the broadcasters about common standards, particularly in respect to children. Picking up Ed’s point that the broadcasters are moving their services online, the broadcasters are very at home with common standards. They might push the frontiers but they understand them and use them. I would expect where they have strong brands—Sky, the BBC, ITV—they are not going to want their online services to depart from the sense that society, and indeed very often families, have about those brands. I think we will see develop quite quickly an interesting and informed discussion in society that will be very useful to this place as you think about these issues.

**Q14 Angie Bray**: I wonder if we can move the focus on to consumer issues. Ed, as you will know, I have asked you in the past about what we are doing to help switchers move to a gaining-provider led approach. How are we doing?
**Ed Richards**: We have made the first very big step. It is a very, very big step because it will be a bigger step than the ensuing ones, and that is to agree that we are going to move to gaining-provider led for the fixed broadband and voice network on BT Openreach. The reason that I regard that as such a big step forward is that the principal reason it has taken us a while to get even to this point is because we had to establish, really from scratch, the entire edifice for this. It may seem to those of you who had experience of this and discovered that it can be quite inconvenient to switch—it is not as easy as choosing between Tesco and Sainsbury’s, for example—that it is stunningly obvious and really common sense that we would have a gaining-provider led service. That is now, as I understand it, the Government’s position and indeed the European Union’s position. Nevertheless, what we have to do and we have had to do is establish that right from a blank sheet of paper with economic principles to establish why you would interfere in any way on what appears to be a functioning market with competitors in place.

We then had to do a cost-benefit analysis impact assessment and set out the full policy for that area. All of that, every line of that and every step of that, could be challenged on the merits in the courts, which is a matter that I have spoken to you about, and we could be overturned. So we had to make sure that we had an absolutely watertight case with full analytical support, with full consumer research support, with full argumentation and full correct process. We have now achieved that. That will come in from June next year and all of that work provides the bedrock—the core analysis, the core framework—to then go on and consider gaining-provider led for all of the other elements of the market. That is precisely what we are now engaged in, so there is an exercise that we are consulting on as we speak to ascertain exactly how we move forward on mobile, on pay TV, cable and so on.

**Q15 Angie Bray**: So what you are saying is that, big step as it is, you have done the easy bit first? So why is it that the mobile industry is much more difficult to shift than the fixed? Why is it?

**Ed Richards**: No, we have done by far the hardest step first. If we did any one of the individual steps each one of those requires, all of those building blocks that I described, so the cost-benefit analysis and impact assessment—

**Q16 Angie Bray**: Why have you decided to do it that way round? For many people the mobile is the one they want most, because particularly for young people it is mobiles they use rather than fixed line.

**Ed Richards**: We did do research into precisely that question and I confess that our instinct was the same as yours, and research said it was the other way round—that there was far more to gain and far more concern about the fixed broadband and telephony market—so we began there. We were led by the research and the evidence. Our instincts were exactly where yours were—we should probably start with mobile—and it turned out not to be the case. One of the things we are again doing right now is conducting the same exercise to say, “Right, what do we do next?” We are also entertaining the possibility, because I think we share your desire to move further faster on this—
**Q17 Angie Bray:** How many people did you consult on that, as a matter of interest?

**Ed Richards:** On that?

**Angie Bray:** Yes, on the fact that people prefer to go first with the fixed line rather than—

**Ed Richards:** How long did we consult on it?

**Angie Bray:** How many people?

**Ed Richards:** I cannot remember, but I can come back to you on that.

**Angie Bray:** Was it a huge number?

**Ed Richards:** It would have been statistically representative because we do not do anything that is not reliable. We are very rigorous in those sorts of area, but I am very happy to share it with you. I remember the conversation in which we said, “Well, that is interesting.” We thought mobile might be first. We are doing the same exercise now and asking people, “If we cannot do them all in parallel what should we do next?” We are entertaining the possibility of doing them all in parallel. It may be more efficient and we may be able to move further faster by doing them all in parallel, but I would like to emphasise the biggest hurdle was establishing the argument in principle and on the underlying economics. None of them could be done before we did that, but having done that you have the bedrock in place.

**Q18 Angie Bray:** What on earth could be the grounds for opposing switching being led by the gaining provider?

**Ed Richards:** Two arguments are typically used, if I simplify it. The first, on economic principles, is that it is an unnecessary intervention. The market is competitive. It is working perfectly well. There is no need, or no justification, and it is disproportionate for us to intervene in any way, shape or form. That is the first argument on economic principle that a number of the operators believe very strongly.

The second argument is wholly different, and again both of these we would expect to be litigated on. The second argument is that even if you agree and accept that there is a case for the intervention, it then has to be justified on a detailed cost-benefit analysis, identifying not only the benefits—we have to quantify the benefits of the intervention, and that is a non-trivial task—but to demonstrate that those benefits exceed the costs associated with the implementation of the gaining-provider led system. For example, changes to systems and billing operations and so on. In every one of those aspects a company that did not agree with the policy could take us to court and challenge us. I am not against that. That is right, but I am merely—

**Q19 Angie Bray:** It certainly does put the consumer interests second, does it not? There is an assumption therefore that what consumers want is less important.

**Ed Richards:** We have to bat for the consumer. We have to fight for the consumer, and that is what we have tried really really hard to do. That is what
we will always do. It is clear that is what our duty is. We absolutely believe that gaining-provider led will help the consumer. It will make it more convenient to switch, it will make competition more effective, and that is the conclusion that we came to, but we do have to jump all of these hurdles to implement that policy.

**Q20 Angie Bray:** What is your comment on what TalkTalk are saying, which is that the current system allows current providers to hide their best offers until they have reached the point of saying they want to leave?

**Ed Richards:** Yes, I think that is absolutely at the heart of our case, that what happens in this environment is that if you have a losing-provider-led system, what typically happens is that you go through the contact with your current provider and they will, quite understandably—it is completely rational and I am not criticising them for it—hide up their sleeve until the last moment the best offer they are willing to give you. They give it to you at the last moment.

**Q21 Angie Bray:** Should that information not be available from the start?

**Ed Richards:** I think that would be almost impossible to regulate for, because you would then be saying, “We are going to dictate your prices,” and I do not think we can do that. The way to get around it is to move to gaining-provider led, where the gaining provider or the competitor in a sense advertises an offer—

**Angie Bray:** Entices, yes.

**Ed Richards:** And that offer is effective because if you are interested in it you phone them up and then they run the relationship. I believe that we are clear that would, overall, have a benefit to competition, because it would prevent this essentially very, very fine form of price discrimination that happens in the example you are talking about and does dull the competitive intensity of the market in the long run. I do think this is an incredibly important issue and I will leave Ofcom calling my current colleagues to arms on this. There has been quite a bit of consolidation in the market that has been justifiable, there is a lot more stickiness in the market because of people buying bundles and in that context if we want to sustain the position the UK consumer has enjoyed—in other words, some of the lowest prices and best range of services in the world—we need to make sure that the competitive intensity is still there. Gaining-provider-led effective switching processes are crucial to that, but I can tell you the team working on this in Ofcom believe that and they know they have to go through the process and do it absolutely correctly and be able to justify it, but the core argument is a very clear one.

**Dame Patricia Hodgson:** The board has no doubt that this is a top priority.

**Q22 Angie Bray:** So very quickly, now you have made this big step forward, when are we going to see it rolled out for mobiles as well?
Ed Richards: That is what we are consulting on at the moment, but as I hope I have conveyed the nature of that consultation is, “What will we do next and how quickly can we move?” That is the nature of the consultation, so we can come back to you on a specific timetable once we have concluded the current stage.

Q23 Mr Bradshaw: Do you not have an ambition for a date?
Ed Richards: We have an internal view of that. The reason I am cautious about going beyond that is because we have to conduct due process and a number of the companies involved in mobile and elsewhere will put on the table reservations, concerns and costs associated with it that we perhaps have not heard of, and I do not want us to be in a position of weakening our position in future litigation because we gave the impression of having a fixed view about a time scale. We do not have a fixed view. We do need to look at the evidence and at the specific costs and benefits associated with any particular area.

Q24 Mr Bradshaw: Why is this all so difficult and complicated when most of the rest of Europe operates a gaining-provider system perfectly happily?
Ed Richards: For all the reasons that I think I have said. We do not even have a policy presumption that has been given to us for gaining-provider led.

Mr Bradshaw: By Government?
Ed Richards: By Government. Government has said that it is in favour of it, which I am delighted about, and that is in its three Cs document. How that manifests itself to support us is not yet clear. The same is true at European level where I have talked to them about it extensively. Again, they agree that gaining-provider led should be the presumption and should be the starting point, but we do not have that as legislative backing. We act at the moment in this area without that presumption, so we have to prove, justify and defend any move in either direction. We do not start with a presumption. If we had a presumption that the legal framework and our duties started with the presumption of gaining-provider led I think that would clearly help us enormously.

Q25 Mr Bradshaw: Should your presumption not be we are on the side of the consumer? Let me tell you a personal anecdote. Every single visit for the last few months I have made to continental Europe I have lost my roaming services, because the EE system has completely failed. I have been without any connectivity at all. I have not had an explanation as to why this happened. I have written to the chairman and the chief executive and nothing at all. When I decided, “Right, I am going to switch,” I then discovered I will be liable for massive penalties. This is just totally unacceptable consumer service.
Ed Richards: There are two or three issues in there. Clearly the loss of service is unsatisfactory and I am glad that you have taken it to the highest level. If you do not get satisfactory redress for that then you have the Alternative Dispute Resolution scheme that we have given you access to. It used to be 12 weeks and we have now shortened it to eight weeks and we
require the companies to advertise its availability. Generally speaking we have found that to be successful and it sounds like you may well end up in that territory.

**Q26 Mr Bradshaw:** Are consumers aware of that?

*Ed Richards:* They weren’t, and we were very concerned about that, so that is why we changed two things. One was to enhance your right to use ADRs—so it was not 12 weeks, it is eight weeks—and, secondly, we required companies to advertise it on bills and things of that kind. There is substantial take-up of it now.

The next point is the switching point. I do not know your individual circumstances but again one of the things that we have changed over the last few years is what are called early termination charges. It used to be the case that early termination charges, if you switched before the end of your contract, were essentially uncontrolled and the company would decide what they were and you could be hit with very high charges. We tackled that a few years ago and early termination charges now are not allowed to be above the avoidable costs that the company incurs. So if you switch early and the company does genuinely incur some costs that it cannot recover because you are leaving the contract before it is complete then we permit them to recover them. They cannot charge more than that, whereas they used to a lot, so it depends on the individual case.

After that we are back into the switching debate. It is important to remember that mobile is a lot better than it used to be. You can access your PAC to transfer a mobile number and keep your number, and generally speaking, from our understanding, that now works very well. It can be done completely online, you get it within 48 hours and then you can retain your number.

**Q27 Mr Bradshaw:** It did not work for me, because EE would not even let me keep my number, which is coming from T-Mobile, even though it is the same company.

*Ed Richards:* That can only be if they feel that you are in breach of contract with them, because you have the absolute right to keep your number and to have your PAC and to transfer it to a new supplier. That is a right, it is very clear and they must do that.

**Mr Bradshaw:** Fascinating.

**Q28 Paul Farrelly:** I have mentioned this point, urging some safeguards and caution because of other personal experience, but I have dealt with so many cases of mis-selling in energy switching with the likes of npower for me to be a little bit more cautious about provider-led, because they have the whip hand. I hope you are resourced to take up those sorts of case in the future if this change happens.

The concern I voiced before, as well as coping with mis-selling, is the issue of safeguards to prevent or stymie attempts at identity fraud. Again, for the record, just now, the same person I reported to the police—a Mr Geael Quinton, or someone purporting to be Geael Quinton—has now again tried to transfer my gas supply. This happened last year with ScottishPower. You mentioned...
Sainsbury’s. This time he is trying it with Sainsbury’s Energy, and last time this person made applications for goods and services, and it is an attempt to establish an address for the purposes of credit or product and service fraud. It took six months to sort out, and so in the energy market people who want to switch suppliers do not have to go through any hoops to prove that they are who they say they are and that they live where they say they live. When you look at mobile phones and switching I would urge you to look at proper safeguards for verification of identity, in case this sort of thing happens. Clearly if there are problems with mobile phone numbers and switching then that can cause a lot more inconvenience to people than people trying unsuccessfully to switch gas and electricity supplies.

**Ed Richards**: It definitely can, and I think it is a very serious point that we have been very mindful of. Going back to my description of why there was a huge amount of work to do before we could move on GPL that is another reason, because there was a legitimate concern that a move to gaining-provider led would create a return to slamming and mis-selling and we had to address that satisfactorily. As the Chairman of the Committee knows all too well, some years ago—

**Chair**: We all rely on our own personal experiences around this Committee.

**Ed Richards**: Some years ago there was a serious problem of slamming in the telecoms industry, very serious, and it took us some months to get on top of it. We had to fight really hard to get on top of it and contain it. I am pleased to say at the moment it seems under control. It is not non-existent, but it has been eliminated in any scale. What we do not want to see happen is a return to that, so we have thought very carefully about the kind of safeguards that we need in moving to GPL and I would absolutely accept that is one of the legitimate concerns that we needed to bottom out. We will have to do so again as we look at the proposals for mobile, cable and pay TV more generally.

**Q29 Paul Farrelly**: I have mentioned this alleged person’s name here because when I at this time do report it to the police and they come back to me and say, “We haven’t got the resources to look at this sort of stuff,” I’ll say, “You’re refusing to take up a case that has been mentioned in Parliament,” so I will leave it there.

**Ed Richards**: I imagine that works.

**Q30 Chair**: I am glad we proved useful. Can I move on to another aspect? You will be aware of the Secretary of State’s ambition to move towards national roaming in the UK. The Mobile Operators Association has said that this is completely unworkable and has been, I think it is fair to say, pretty negative about the whole concept. Do you think it is possible?

**Ed Richards**: It is possible. We would not agree that it is unworkable. It is technically feasible and it is commercially feasible as well. I do not think that should be the main argument. The main question is whether it is the best way forward in tackling the coverage issues that people are concerned about in rural areas and roads and so on, or whether there is a better way when one weighs these things in the round. That is exactly what we are looking at with
industry and Government at the moment. I think the Secretary of State has said, “I can see a solution to this.” That is national roaming. If the industry do not want national roaming— and your description of the Mobile Operators Association is broadly accurate—it is important for them to make some proposals about how we can make further coverage improvements that meet the objective.

We all share the ambition to improve coverage. As the Committee will remember, one of the big contrasts between what Ofcom did with the 4G auction as opposed to the 3G auction was to introduce a coverage obligation. The 3G coverage obligation was set at 60% and, frankly, we have been living with the consequences of that ever since. What we chose to do was to inevitably raise a little less money as a result but we said that coverage is a really important feature of what everybody in the UK wants. This is a UK service, so we want coverage to be 99%.

Q31 Chair: Even if you increase coverage will it not always be the case that in certain, possibly rural, areas one operator’s signal is better than another? Does the Secretary of State not have quite a good point that it is ridiculous that somebody coming to this country from France can choose which operator to log into, whereas a British citizen cannot?

Ed Richards: That is one of the ironies of the situation, of course. The same is true in reverse, so it is not exclusively a UK problem. You will all have been on holiday and realised that some signals are better than others. Of course he has a point and I think that is why we are all working very hard to identify the best way forward. We call this the partial not-spot problem where one operator has coverage but another does not, and you can walk from one end of a village to another and lose service but pick up somebody else’s. As I say, he has put out a challenge on that. He has said, “We want to make progress on this.” I think national roaming could do that.

If I return to my opening remark, while I think it is technically and commercially feasible there are obviously arguments on the other side that concern the operators about the impact on competition and investment. Those are concerns we would share, and I am sure the Secretary of State would share them as well, so we need to find the best way forward.

It is worth saying that one of the biggest changes that will continue to improve this, whatever happens, is that a few years ago we agreed to the merger of the upstream infrastructure, so there are now two upstream infrastructure sites and masts, essentially, EE and Three’s operation and O2 and Vodafone’s. What that means is they will typically both be on a given site and as that project is completed that will reduce the partial not-spots and you would certainly expect at least two operators to be broadly present. So there are many things that are happening on this and we are in detailed discussions with the industry and with the Government on precisely this question at the moment. We are all interested in doing two things: improving the position and making coverage better for users across the whole of the UK, but doing so with the best possible solution, the best possible policy.

Q32 Chair: What is the reason for not doing it?
Ed Richards: There are two or three concerns. The first is, does it have an impact on long-term investment incentives? So if I have built out my network to here, but then you are allowed to just hitch a ride on my network, what incentive—

Chair: But I am paying you to do so.

Ed Richards: That is true, but the setting of that price to ensure that I am incentivised to build that mast in the first place is quite a complicated task, because you are talking about areas of course—and this is in a sense the whole point—with very low use. That is why they are not covered in the first place. You have to set a price there that ensures that I build the mast but that does not lead to a price for the consumer that is exorbitant. It is quite a complicated area. That is one reason.

The second reason is, what is the nature of competition? We commented earlier that we think that the UK has a fairly healthy competitive market for the mobile sector. It does by any comparison. We probably have among the most competitive in the world, and we certainly have among the lowest prices anywhere in the world. We do not want to give that up lightly, but if everybody has the same network then that obviously has some impact on companies’ abilities to competitively differentiate. We want the company to say, “Well, Mr Whittingdale, we can offer you service in the area you are particularly concerned about,” and we want that to be an incentive. The concern is whether we can find a way of ensuring that national roaming does not have an effect on investment and competition that we do not regret in the future. That is the concern.

It is worth adding that the mobile companies would probably be more sceptical than I have expressed the position to be on technical feasibility, and I should elaborate why that is. It is technically feasible, but it is also true that there are technical consequences of national roaming and there are probably a couple. The first is that if you are roaming then your Smartphone or your phone has to be set up to look for the other networks. That means it will do that almost constantly in those areas, and that is going to have a big impact on battery life. It is constantly using power to look for other networks, so battery life will be affected.

Q33 Chair: Can’t you set it so that it only does it if you ask it to do it? I mean if you are perfectly happy with your own operator, because they have a signal, but then you find yourself without one then you say to your phone, “Will you have a look and see if anybody else is around”?

Ed Richards: You can do that, but I think the big benefit of roaming is that it is just instant and you have roamed and the service is maintained. Another problem that I think the operators are concerned about is the quality of experience. So I may be on a 4G service, I may be having a particular kind of consumer experience, but then I may pick up a stronger signal that I roam on to, but then turns out only to be a 2G signal. So while I am absolutely clear it is technically feasible there are concerns of that kind that I think the mobile operators are raising and those are the kind of things that we need to work through.
Q34 Chair: Can I move on to another thorny issue? Europe. We are told by the new Commission that completion of the digital single market is virtually top priority. There seems to be some difference of view to quite what that means. I understand that some of the European big telecoms companies have suggested there should be fewer telecom providers across Europe, rather than more, and that this might be looked at with some sympathy by the Commission. Is that the case, and how do you view that?

Ed Richards: It is very definitely the case that the biggest mobile operators are making a case for widespread consolidation and fewer operators and, in a sense, they are making a case for reduction in competition. Their argument is that that is what you need in a period that requires wholesale new investment across the continent and that the returns they are earning in the competitive market are not high enough to justify that investment. Clearly that is a plausible argument. On the other side, it is not an argument that one would want to immediately agree with, because it would not be any good at all, for example, if all that happened was that profit rates were increased and there was no new investment. Equally, I think there are a number of countries, of which the UK is one but there are some others as well, where we have managed to deliver the investment while maintaining the level of competition.

At the moment I do not see persuasive evidence for the UK that we need to have consolidation in order to enable the investment. The reason I say that with a degree of confidence at the moment is because we are aware of all the network roll-out plans of the four mobile operators. Let us just talk about mobile for a second. I am happy to talk about fixed as well. They are all planning on and indeed rolling out their 4G networks. They are in a competitive race to roll those out. We know that O2 must roll out its network to 99% coverage by 2017 at the latest. I believe both EE and Vodafone have said they will match that and Three, in order to compete, will not be far behind. On the face of it, we are securing the investment; we are securing the new network build at a very fast rate. We are ahead on 4G deployment against EU five comparators now, so one would have to ask oneself very searching questions about what the benefits of permitting consolidation would be. Because we would need to look at that on the merits in the circumstances we cannot prejudge, but that is the backdrop to the way we would think about it.

Q35 Chair: That is exactly the kind of argument we would hope Ofcom would be putting to the Commission. It has been suggested that your annual plan does not make a great deal of mention of Europe, and yet a lot of the biggest developments do appear now to be taking place in Europe.

Dame Patricia Hodgson: I suppose that probably is because it is constantly in our sights and there is a team constantly there, so in terms of strategic priorities it is just as a given.

Ed Richards: Absolutely. By analogy, it would be like we do not have a strategic priority each year to make sure that we are ensuring the broadcasting code is adhered to. That is because it is absolutely in the warp and weft of what we do and to be honest the European dimension on so many of these things is exactly the same. We have to know what is happening in
Europe, we have to be articulating the UK position, we have to be effective in doing that, and we have a very strong team who are very good.

*Dame Patricia Hodgson*: A very strong team.

**Q36 Chair**: Another area where the UK has a very strong interest but where there seems to be a threat emerging is the country of origin principle. Are you confident that we can maintain that?

*Ed Richards*: There is no doubt that there is going to be a debate about the country of origin principle. I would be surprised if there was a serious move to overthrow it, but I guess that is possible. It is important to identify why some people are concerned about it and in order to protect the idea and the role it plays in the single market we need to think about how we address the concerns. There are some concerns, so let me give you the well-known Swedish example. The Swedish example is where in Sweden the national Parliament has decided that they do not want advertising on children’s television, so all that happens, of course, is that a company with advertising on children’s television is licensed somewhere else and beams it into Sweden. As you can imagine that creates a little discomfort. I think what we are trying to do with our co-content regulators across Europe is work out how we have some sort of collaborative mechanism to deal with that, without jettisoning the core idea of a European market. I would say that is a work in progress, but it is being done with a good spirit and with a sense that people want to try to balance both the objectives here.

**Q37 Philip Davies**: Last year you might recall I mentioned net neutrality and you indicated then that Ofcom did not have the powers to act around the potential blocking of legal internet services. I just wondered whether that was still the case.

*Ed Richards*: It remains the case that we do not believe we have definitive powers in that area. It is one of the issues that are on the table in the European document, the telecoms single market. If it were to be passed as it is currently drafted, at least by the Parliament’s version, then we would have such powers. I believe that is the case, but obviously we are not at that position so at the moment that remains the case.

It is one of those areas where we could do things, and we do do things and we make clear what our general view of that is, but we are not absolutely clear we have absolutely robust powers to stop that should it happen.

**Q38 Philip Davies**: You might be aware that I tabled an amendment during the passage in the House of Commons of the Consumer Rights Bill, which would have enshrined in law the principle that all internet and mobile operators must sell all legal internet services if it claims to sell an internet package. It got support from across the House, the shadow Front Bench were very supportive, the Liberal Democrats were, and, not for the first time, my amendment was rejected by the Government. I know the Labour Party and the Lords have tabled a very similar amendment to mine, probably a better one, I might say. What is
your view of that amendment and would that give you the powers that you would need in order to intervene?

**Ed Richards:** I would have to study it again to be absolutely clear about it, but it sounds like it would make those powers definitive. That would at least clarify the position for everybody. People have different views about whether we should or should not have those powers. My own instinct is that it would be better if we did have that power, so long as it was qualified by our need to exercise it with appropriate discretion and with due process. But, ultimately, if you believe in anything that approaches what an ordinary person might regard as an open internet, the ability to access a legal service over the internet does seem to me to be at the heart of that idea.

**Q39 Philip Davies:** I am pleased you think that. There is a stakeholders group Open Internet Code of Practice, which I know that Vodafone and EE are in the process of signing up, but would you accept that given it has absolutely no sanctions whatever—and there are ways of getting round it in terms of what you claim to be offering to the customer—that alone is not sufficient to guarantee the open access that is so important?

**Ed Richards:** Again, I would have to look at the detail of what they are signing up to and I cannot recall it immediately now. There are many ways of positioning these kinds of service that tilt the playing field one way or another. There is no question about that. So one would approach it with a slightly sceptical eye. That is why the best position—this is the argument that we have tried to make with colleagues across Europe—is to give the regulators, and it is all the regulators across Europe, a clear backstop power, but then to make sure they exercise that power appropriately. It is not a power to get out and deploy willy-nilly or thoughtlessly. It is a power so ultimately companies know that that can happen and then you have a grown-up discussion about what is and what is not going on.

**Q40 Philip Davies:** Can I just ask, then, given that the only people who seem to be rejecting this at the moment are the Government—you seem to be quite warm to the idea, everyone else seems to be very warm to the idea—I just wondered what discussions you had had with the Government about this? If you think you should have the powers, have you made that view known to the Government and, if so, what response have you had?

**Ed Richards:** We obviously discuss many different things with the Government and I am sure they know that is our general position, as they do, for example, on gaining-provider led as a presumption. It is then a matter for Government to decide what its priorities are, what process of consultation it wants to go through, what discussions it wants to have with industry stakeholders and what the other demands on its legislative agenda are. Obviously we cannot speak for those.

**Q41 Philip Davies:** I understand that, but in terms of its legislative agenda there is a Bill going through Parliament, which is within scope to do this, so it does not have an impact on the legislative agenda. I could not make head nor tail of what their objection was during the debate, if I am perfectly honest. I
just wondered whether or not you could help us out and give a clearer explanation of why the Government will not go along with it. I am sure you can do a better job than the Minister did at trying to explain why they were not pressing ahead with it, because I still am none the wiser.

**Ed Richards**: I would imagine that one of the concerns they would have is that this is an issue that provokes strong views on many different sides and therefore in moving forward on it in legislative terms they may well wish to ensure that there is a much broader, full consultation process with all the parties that would be interested. I would imagine that would probably be one of their concerns.

**Q42 Philip Davies**: I know you are moving on so could I just ask the Chair whether or not you will continue to press the Government on this matter? It is very important to lots of consumers who buy something in good faith and then find out in the minuscule terms and conditions later they cannot access the internet sites they were wanting to buy the equipment to access in the first place.

**Dame Patricia Hodgson**: This is a problem that may grow, and you are absolutely right to be concerned about it and to be thinking about solutions. It is at a stage where I do not think we are aware of enormous abuses at this juncture.

**Ed Richards**: No, that is right.

**Dame Patricia Hodgson**: It is a matter that we continue to discuss with Government. We continue to draw to their attention and Ed is, of course, right, that it is perfectly reasonable to say if we are going to legislate we had better get it right because we know how fast technology moves and there are often unintended consequences. But the principle of your concerns is one we share.

**Q43 Paul Farrelly**: It is almost a year since we produced a report on nuisance calls, which found that, yes, they were indeed a nuisance. What progress have you made over the last year in addressing the problem?

**Dame Patricia Hodgson**: I would like to say how much appreciated the Committee’s report was. There was great clarity in it, in an area where there is very often little clarity, and what was particularly helpful was the distinction you were able to make between actions that you recommended could, in practice, be taken forward and the much more challenging technological and software solutions that need to be international. We have picked up a good deal—and I will ask Ed to talk about that—but it moved things forward and I would not be a bit surprised if it had not helped move the Government, which of course has now said it will legislate to revise the definition of “nuisance”, which will allow the Information Commissioner’s office to be more effective in its fines and action.

**Ed Richards**: That is right, and the report was absolutely very helpful. The most immediate action we were hoping for is exactly the one Patricia has just described. That is a big step forward and we are delighted that the Secretary
of State has picked that up and is moving forward with it, but we have done a number of other things as well. We tried to pursue all of the points that were raised in the report. I will not go with them all in detail now but we can send you an update of what we have done.

The one I would highlight, where we have made a big step forward, is the response or the access and the advice to consumers who are bothered by nuisance calls. There is no doubt that one of the problems here was, and is, that there is not a single point of responsibility. Some is with the Government, some is with the ICO, there is a little bit with us, there is some with MOJ and so on. What we did following your report was ensure that there was a single landing page for nuisance calls. If you key in “nuisance calls”, when we tested it, you get the Ofcom nuisance call page. That page gives you comprehensive information. It routes you on to help you find where you need to go. It is completely co-ordinated with the ICO and that has made a big difference. It is accessible. It comes up quickly when people search for it, and it gives consistent and clear information. I hope that that is a big step forward in helping people.

Q44 Paul Farrelly: That update would be quite helpful. Just on one point of detail: are you considering extending your persistent misuse policy to require commercial concerns to present caller line ID when they make outgoing calls to consumers?

Ed Richards: We are considering that. We are considering some technical measures as well and some collaboration internationally because, as you know from your own work, one of the reasons this is so hard is because it is a global phenomenon. For example, the cases we are dealing with at the moment are generated from call centres in India, some of which we believe are acting straightforwardly fraudulently. It is a tough nut to crack and so we are looking at a whole range of things, one of which is improving CLI regulation and access. Others of which involve collaboration and, frankly, in the end we need agreements between countries, which are relevant; India is a good example. We have to keep pursuing and pressing on all of those things because regrettably it is one of those issues where there just is not one policy or one fix. It is multiple operators with multiple incentives in many different countries, so it has turned out to be genuinely tough to crack.

Q45 Paul Farrelly: Let me raise a connect issue, which I have raised before. This also neatly gets us on to the next section about British Telecom. I have BT broadband. I have gone to BT broadband because I have always had a BT fixed line; it is just convenient for me. I do not need their fixed lines for nuisance calls. I now have two that I do not want and I pay for. Is it an acceptable position that a company like BT can make it a condition of having their broadband that you have and pay for a fixed line and it is a number that you do not want? Or is the only answer is to shop around?

Ed Richards: No, it is a very interesting question and it has a lot of history. The reason it is acceptable and has evolved in that way is because of course broadband is an accident. One always has to remember this. The network was built for voice telephony. Some brilliant engineers many years, indeed decades, later discovered that there was this thing called data that you could
also pipe over the same network. The reason that it is difficult—unless we did something very dramatic to separate the two out—is because it is both paying for the same line. So if you said, “Right, you can no longer charge for the line rental,” what would happen is that all of that cost would transfer to broadband. There is a phenomenon of this kind called “Naked DSL”, which exists in other countries. Sometimes people will come to me and say, “Why do we not have Naked DSL in the UK?” and what you discover is that the Naked DSL in the other country turns out to be more expensive than the line and the broadband in the UK because you are essentially just moving the costs from one place to another. That is the background to it.

With that said, what we are finding increasingly is a number of people who do want fixed broadband, who take therefore the line and the broadband but then do not use the phone at all. So they incur no costs for calls, no 0850 numbers or anything like that, and they use exclusively their mobile phone. I think that number is now at about 12% so it is a serious number, and it is higher in the US already. It is very high, as you can imagine, among students who do not want a fixed line at all. That is one of the big changes that we are seeing unfold at the moment. That I expect to continue and people will make judgments and the fixed line operators will need to make their proposition competitive to keep people buying it because the mobile alternative is ever stronger.

**Paul Farrelly:** So I should just unplug my line and shop around?

**Ed Richards:** If you wanted to receive no nuisance calls on your fixed line and incur no calls costs then you just take the phone out.

**Paul Farrelly:** Then shop around for broadband.

**Ed Richards:** Yes.

**Dame Patricia Hodgson:** Alternatively, remember that if you do that you do not have your absolute guaranteed emergency line if the power goes down and there is a poor mobile reception. That is a matter of choice. People can choose not to have it but a lot of people nowadays are not aware that when the electricity goes down unless you have an old-fashioned phone, and if your mobile is not totally reliable or the battery has run down, you are without a phone. I always remind people who have elderly people or babies or children in the house of that.

**Paul Farrelly:** My fixed line did not work last time we had a power cut.

**Dame Patricia Hodgson:** Did you have one of those cell phone things that you can walk around? You have to have an old-fashioned phone that goes into the plug

**Chair:** It has to be one of the Bakelite ones.

**Paul Farrelly:** No, it is not a Dr Who phone, no.

**Dame Patricia Hodgson:** That is what you need.
Q46 Jim Sheridan: Can I confirm I have no personal problems with telephones? This may be completely irrelevant but I am sure the last time we spoke about nuisance calls there was some concern about people’s personal data being sold and bought, and so on. People getting calls in the middle of their shift work, being woken up in their bed, and so on, by nuisance calls. Is that still the case that the data is being sold or bought?

Ed Richards: We absolutely still have concerns about the access and use of data, which enables people to be subject to nuisance calls. There is no doubt that area remains imperfect, but it is mainly an issue for the Information Commissioner’s office rather than us, because it is use of private data. But we would only have to survey a number of the complaints we receive about nuisance calls to identify that that is a likely concern.

Q47 Jim Sheridan: What is the level of complaints you have received?

Ed Richards: I do not know, Jim. I would not want to put a number on it but misuse of that sort of data—

Jim Sheridan: Hundreds of thousands?

Ed Richards: It is probably not hundreds of thousands, no. It is hundreds towards thousands, I suspect. But often it is difficult to identify because if somebody phoned us about a nuisance call the source of that may have been abusive data but they may never even mention it because they just say, “I am phoning out of sheer frustration because I have had another three nuisance calls and I just wanted to tell you that,” and then they put the phone down. That would not be logged. We will only typically uncover it if it is a relatively sophisticated user who has the time and energy to then explain to us what they think might be happening. As everybody knows, that is a time-consuming and rather boring thing to have to do so it is difficult to be precise about what the data tells you.

Q48 Angie Bray: If we can move on to broadband and the internet, I want to ask you, what additional role do you think Ofcom can play in helping to meet Government targets on superfast broadband?

Ed Richards: We have a long way to go on this but I would like to begin by saying we have made huge progress and we are in a period in which the country has changed its view about this. When I started in this job—certainly when I started at Ofcom—broadband take-up was quite low, frankly—very low. Now what has happened is the country has moved to a point where essentially we regard this like gas, water and electricity and we want it everywhere and we want it at much higher speeds. What has happened during this decade, and what will continue for the next decade, is a response and a massive investment to meet that public expectation, and we have made very good progress so far. Our roll-out superfast broadband is ahead of anybody else’s in the EU5. It is not good as Singapore, South Korea or the Swedes but against a comparably-sized economy with roughly the same level of income per head, we are now the best in the EUS and that is a great place to be. That pace of improvement will continue.
So where we are at the moment is we have already pretty much hit the commercial deployment. That is almost complete; Virgin and BT. The Government's BDUK programme will now take that in excess of 90% and that is excellent. I think that is by the end of 2016, 2017. We have every reason to believe that will be on schedule. Then there remains a big question about how we deliver the last 7% or 8%. That is a big policy question for the Government and for Parliament because it will not be commercially deployed. It is uneconomic. So that is the big outstanding issue, and we will—as we have on the first stage—help the Government of the day in every way we can with technical and competition advice.

Ultimately the policy choice, the contracting and choice of provider on all of that has to be a matter for the Government because it is the use of public money.

**Dame Patricia Hodgson:** I would like to add to that. One of the unique things that Ofcom can do is to provide the mapping analysis of the rollout of the speeds that are achievable. It is not as simple as the average speed. It is what percentage of the population can get guaranteed—more than 2, more than 10 and so on. This information is vitally important when it comes to the infills, where it is a broadband area but there are no street cabinets in that particular area, as well as, of course, the rural areas that Ed is talking about where it is not economic and it is a matter for Government.

This information is shared obviously not only with the UK Government but with the national Administrations and with cities and councils who want it. For example—this is a particular dramatic example—before the summer the City of London came to see us with a particular concern they have with those spots where the high speed is not good. A number of curious reasons for that: firstly, the mediaeval street pattern does not lend itself to cabinets; secondly, some of the cabinets were taken out during the IRA concerns, and the City was thinking what is it going to do about it. They were mapping precisely where the problems were and coming up with solutions that included—they were particular solutions for a city of course—asking big firms with big infrastructure going into their basements whether they would allow nodes and services to small firms piggybacking on the back of that.

Those kinds of solution we will make sure, through our nations and regions committees, are available to cities across the country that want to think about that sort of thing. The information and the technical help is a particular thing that we can offer.

**Ed Richards:** We are about to publish a very important piece of work on that, which is our infrastructure report, and that will map where superfast coverage is and is not. It will map average broadband speed but would also map individual broadband speed. So it will tell you what you can expect to get, and as Patricia noted, it will enable us to say, “These areas are very good but here is a weak area or not spot that we can tackle.”

I should add one more thing, if I may, which is I place quite a lot of emphasis on that last 8%, and that is right. That is one of those glaring policy issues to be resolved. But at the same time we are trying to make sure that the regulatory regime incentivises—is consistent with—alternative investment, which helps better speeds, better coverage and competition in the long run. So there are a
number of smaller companies who have decided to offer their own fibre services in competition to BT and others—Gigaclear and CityFibre, for example. We now know that TalkTalk and Sky have teamed up with CityFibre to propose to take fibre into two or three cities as an experiment; I think they are starting with York. We would regard this as all extremely positive. That feels to us again that you have competition working alongside investment and that is the trick here.

Q49 Angie Bray: It does seem that the Government’s targets are more around residential rather than about businesses.

Ed Richards: Yes.

Angie Bray: So what more can we do to start getting some proper aspirational targets to get businesses sorted, because businesses in my constituency in Park Royal, which is a large business and industrial estate—one of the largest in Europe—are absolutely horrified at how poor their broadband is?

Ed Richards: I am very glad you raised this. This is an important point. I have been talking about residential and residential was, in a sense, where we began. Then we do absolutely have to talk about business, and we probably need to separate it into two. What we might call big businesses, big corporates, we do not need to worry about. They are big companies who have real spending power and they look after themselves. They secure extraordinarily good bargain prices in my experience. The area of concern here is the SME.

Angie Bray: Which is pretty much what Park Royal is.

Ed Richards: There is an issue here. We have launched fairly recently, a few weeks ago, a further piece of work on SMEs and it is explicitly raising two or three questions. One is availability of superfast services for SMEs. A second is whether the market is working very well for SMEs because we hear a lot of concern that competition does not work very well. The reason for that, as I read it at the moment, is because the big companies have typically chased the big buyers and SMEs are highly diverse, they have very different needs, they are quite costly to serve, and I am not sure the market is working brilliantly there. So there are two issues to resolve.

On the availability issue, in particular, there is no doubt there is an availability concern. Sometimes it is in particular areas of the cities. Sounds like there is one in your constituency, Angie. There is also exactly the same in rural areas. Let me give an example I know about in Wales where many years ago a local authority might have located a small business park in a certain area because it was brownfield or something of that kind. Of course it turns out that that is a long way from the exchange and there is no fibre to it. It was a cracking idea at the time but now when everybody wants fibre what you have is a very expensive cost of providing fibre to it. The operators—let us say BT for example now—say, “That is difficult for us. The cost is very expensive. You have very small companies who cannot tell us what they want and some of them might be gone in six months. Their turnover is very high so they will not contract for the length of time that it would make economic sense for us to build the fibre,” and so we enter the problem.
If I was to take a punt now, I would expect our work in this area to reveal exactly that kind of problem. The territory we will be in then is pushing the companies to do whatever they can to support business and try to find a way of making that economic, and expecting more of them, to be honest. But equally there may be areas where we have to say to local authorities, “Look, you have a business park here. It is absolutely great. You have real business but there is a cost problem of getting a fibre to you. What deal can be done to make this happen?”

Q50 Angie Bray: The chairman of the Park Royal Association told me that quite frankly for him it is better sometimes to use his own personal mobile, 4G, providing a signal to his iPad or something to do his work on rather than trusting the locally provided broadband. He says that in any conversation with BT about Infinity it is always just around the corner but it never quite happens.

Ed Richards: You will obviously have to ask BT about that directly, but we will provide the coverage data and we will have it to a reasonable postcode level, so if you drop me an email with your postcode we will have a look where it is on the infrastructure report. We can then test that against what there is. But I suspect it is probably a case of the kind that I am describing where historically there was not a fibre build and the economics for BT or Virgin do not quite make sense because there is not quite enough scale of business, and to me that is where you probably need to have a local authority enterprise conversation.

Angie Bray: There is a lot of ambition in the area.

Ed Richards: You clearly need it. Again, to be clear, I said that the UK has done well in this area, and we are in a strong position, but this is one of the areas where I have no doubt we have to do better over the next five years. It is absolutely crucial that SMEs, whether urban or rural, have the digital communications infrastructure to support them, and we have to find a way of doing that. We have to do that. In my list of things to resolve, which I will bequeath to my successor. That is definitely on it.

Dame Patricia Hodgson: It is in the work plan.

Ed Richards: The work is under way.

Q51 Angie Bray: Can I just ask one very small technical question, which I do not necessarily quite understand myself but it is something that I have been told? That is, for all the stuff about fibre being rolled out it only goes so far from the exchange and after that BT is still using the old-fashioned copper wire, which is a problem.

Dame Patricia Hodgson: That is what I was talking about with the street cabinets. It goes to the street cabinet and after that BT is still using the old phone line.

Angie Bray: Is that something that has to be improved?

Ed Richards: It varies, Angie. Most of the roll-out is you are putting fibre to the cabinet.
Angie Bray: To the green box?

Ed Richards: That is right. If you are near that cabinet or within a reasonable distance—1 km, 2 km—that is what boosts your speed to 80 megabits per second, so a huge increase. What it does not do is take fibre all the way to the home. I am comfortable with that at the moment, and the reason for that is, imagine that tomorrow we took fibre or we made BT or Virgin, or whoever, take fibre all the way to the home. That would cost billions and billions and billions. Really big numbers—100% coverage, fibre to every home in the UK and many, many billions.

At the moment what you discover is that if somebody has 80 megabits per second—and I am back to residential now for a second—that is more than enough. There just are not many applications, unless you are an extreme gamer, where you need those kinds of speed. To use iPlayer or YouView, 8 to 10 megabits per second is cracking. It would be inefficient to spend those billions until we are clear there is a return associated with it. We will get there.

One of the reasons—if I may go back to one of these points I made earlier about balancing investment and competition—it is important to keep that balance is because I do think we will expect the companies to invest many billions more in the years ahead. It is important that they believe that is worth doing otherwise we will have an investment drought and that is not going to work.

Q52 Angie Bray: But if you are further away from the green box you do not get the speed?

Ed Richards: So the other problem is exactly that. If you are 10 km away from the green box it deteriorates massively and in those circumstances we are going to be faced with the position that if we say somebody only has 2 megabits per second, even though fibre is to the cabinet, we are going to have to face the next upgrade, which will be taking fibre, interestingly enough not to the home—I am getting over technical probably—but to something called the distribution point, which is the nearest point at which it splices to multiple homes. That will probably deal with it. That next wave of investment, we have to anticipate, we have to believe that it will come, but we have to do it at a time when it makes economic sense.

Chair: I want to move on to broadcasting and media. Very quickly, Paul Farrelly.

Q53 Paul Farrelly: I promise, as we are BT, I am not going to regale you with any more personal experiences. Just almost as a brief valedictory—

Chair: Very brief.

Paul Farrelly: Where do you see BT and its position in the market at the moment? How do you feel about competitors’ continuing claims about being charged too much for access to infrastructure, and how generally do you feel that Openreach is performing? Small questions.

Chair: Can you answer that in 30 seconds?
**Ed Richards**: Openreach was not performing as we expected it to do a few years ago. They would be the first to admit that. The quality of service was not good enough. We have now introduced regulation on that and they have sorted their act out, at least on the residential side. They have further to go on the business side for Ethernet provision and we expect them to sort that out. That is a key issue.

I think the charging is fair. This is something we review every three years. We have just recently concluded that and, by definition, I must believe in the conclusions that we have recently arrived at. They were fully considered—full consultation through our board—and they are good decisions for where we are at present.

The overall competitive landscape and Openreach’s role in that is something we look at every time that we consider these market reviews. We always ask ourselves: how is regulation working? Is competition effective? What more, if anything, needs to be done? We just conducted that process recently. We will do it again in the future and the right thing for a regulator to be is open-minded about that question at all times.

At the moment we have function separation in the UK, hence the creation of Openreach. That was a very big step. It has worked very well for us. It is the most intrusive regulation of its kind in Europe. There is no other European country that has such robust regulation of the access part of the network. I do not regret that. That was absolutely right. In fact, it has worked well for the UK. Next year will be the 10th anniversary of that and that will present an opportunity for everybody just to reflect upon how well it has worked, whether it is working as we expected today and whether anything needs to be changed in the future.

**Q54 Mr Bradshaw**: I beg forgiveness from my colleagues, but I have a group of school children from my constituency to see, so I am jumping the queue with a couple of questions. Now you are leaving you can give us your honest assessment of the success of local television, can you not?

**Ed Richards**: Rather like the French Revolution, it is too early to say.

**Q55 Mr Bradshaw**: Is it? Several have already folded. The one in London has, according to the BARB score, zero viewers. Is it really too early?

**Ed Richards**: The reason it is too early to say is because what has happened with local TV is there is a wide range of different kinds of provider. There is “London Live” at one end and then there is a service in, for example, Grimsby at the other end. They are very different beasts. They are very early in their paths and I do not think yet we know which will succeed and in what way. We know there has been some trouble in some areas, Birmingham most notoriously, but equally, while that demonstrates a challenge that had not been met—it is probable; I am not certain yet—if we were to re-advertise Birmingham, if that is where we end up with, I think we will have takers for the licence. You see demand still there, you obviously do see problems in some areas, but you also see a very different range of kinds of providers. We will only know what that looks like and which, if any, are successful or highly successful or do not succeed, over the course of three, four years.
**Q56 Mr Bradshaw:** A big concern in local radio among small stations, like my own in Exeter, Radio Exe, is that the big boys like Global are basically doing what Radio 1 and Radio 2 do and are broadcasting very little and ever-decreasing amounts of real local news and current affairs content. How are you dealing with that problem?

**Ed Richards:** There are two issues probably worth highlighting here. Localness remains an important issue for us. We obviously cannot listen to everything so we rely upon information from audiences, and sometimes competitors, to make sure that we enforce localness, but we have said very clearly that localness, and in particular news and information, remains at the heart of what we think Parliament asked us to do in commercial radio. Some in the industry do not like that. They do not agree with it. Everybody knows that they do not agree with us on that. I am sure that will remain the case, but we are clear that localness does matter and we need to make sure it stays.

There is another issue, which is the music formats. We are shortly going to consult on whether we should change our approach to that. We are required to regulate by format in law but obviously one has discretion about the degree to which that regulation takes place, but that is a different matter from the provision of local news and information.

**Q57 Mr Bradshaw:** There is also the threat coming from the other end to local radio stations—community radio stations and the question of advertising. They are being squeezed from both sides.

**Ed Richards:** Community radio operates under rules about how much advertising it can take. They typically are very small operations but I recognise absolutely the concern that a local commercial station would have. We have always said we need to see community radio as a different kind of service, and we have always been conscious of the commercial radio industry’s concerns about this, and they are reasonable. It is fair for them to say, “Are you just not licensing a great new swathe of purely commercial radio stations?” and that was not the idea. They are there to do something different but obviously it is therefore important to make sure they are doing something different. Hopefully we have done that, but obviously if there are cases that concern specific companies we would look at them.

**Q58 Mr Bradshaw:** Dame Patricia, how have you responded to the complaint from the Federation of Entertainment Unions that Ofcom has not done nearly enough to achieve progress on diversity in the industry?

**Dame Patricia Hodgson:** I will answer in relation to Ofcom itself and then hand over to Ed for the discussions he is having in this sector. It is something that Ofcom takes very seriously. We are a standard setter ourselves: 20% of our staff come from black and ethnic minority communities, which is not matched anywhere else. We are very clear in all our recruitment and in the example that we set within the sector on that matter. It has been moving very fast, has it not, recently? In fact we shall be talking about this with Channel 4 tomorrow.
Ed Richards: Obviously there is a little bit of history here. The history was that the duty that we have in this area was going to be removed. We acted on the basis for, I think, two years that the duty was about to be removed at any point in time. During that period we were in the process of reducing the cost of Ofcom by 33%, so we were of course not doing things that we did not believe we had to do. This was in that category. That has now changed so we need to and have returned to making sure we meet the duty.

Luckily, I would say, our full re-engagement on it has met with a wave of interest in it in the industry, provoked one might say by points being raised by participants. That is probably right and that is good. So we are now engaged in very good dialogue with the broadcasters—more productive than at any point I can remember it. That is true of all of them, to be honest. There seems to be a real willingness to engage with it—a recognition that there is a point here and that as an industry that reflects society back to itself, there is a special responsibility to work hard in this area. I personally agree with that. That is the right approach. There is a particular responsibility in this area.

We are now working closely with them through the cultural diversity network. We are going to get the data gathered. We are going to look at it. We are going to analyse it rather in the way that Patricia described earlier. We will be the keeper of the facts in that area. We will be the guarantor of independence and that nobody is trying to present something that is not the case. That will be the basis for work in the future. That will be off screen and on screen, so that is an interesting step forward.

We are obviously very mindful of our role when it comes to on-screen presentation. We do not want to get ourselves in a position of the regulator saying what does and does not go on screen, but we can play a very helpful role to make sure that work is taking place, to make sure it is being discussed, and to make sure the broadcasters are thinking about it and responding in the right way. So it feels to me, Ben, at the moment, as if we are back in a much more positive frame of mind. I know we have a duty on it, but if we did not have co-operation from the broadcasters it would be like pushing water uphill. My sense is that they are now conscious of this, engaged in it and therefore I can be optimistic about it.

Dame Patricia Hodgson: They are raising the matter with us now.

Q59 Mr Bradshaw: Finally, we get asked to ask you guys hundreds of things from all sorts of individuals and organisations but this struck me because it chimes very much with what I feel when I watch stuff. It is from British Naturism, and is about whether we have the balance right in this country between violence and nudity. Let me just read out one thing. They claim that, for example, “Facebook bans nipples but deems appalling cruelty, extreme violence and pornography to be acceptable” and it goes on to ask, “Do we want the outcomes of the most prudish western country such as the USA, or those of the least prudish, such as Denmark?” They have a point, have they not?

Ed Richards: Facebook, of course, we do not regulate.
Q60 Mr Bradshaw: No, but if you watch television or film it is full of violence—it is full of appalling violence—yet we have these restrictions on quite innocent healthy depiction of human nakedness.

Ed Richards: That is a very interesting point. Let me tell you how we approach it, and this is something we revisit every year. We monitor and research what the public’s view about these sorts of thing is and we guide our own judgment by that view. That is because we are concerned with generally acceptable standards and so on. There has been a big change in this over the years. People are more tolerant of a degree of violence than they were. They are much more tolerant of certain forms of swearing than they were. There are still some words that are—very few to be honest—off limits or only in certain circumstances but they are more tolerant of swearing. They are much less tolerant, interestingly enough, of language that is regarded as discriminatory or unfair and unjust towards people. That is a big change when you think about the 1970s and some of the programmes that went out then. The public just do not want to see that anymore.

I am going to have to go back and check for you what has happened to the tolerance of nudity because I cannot remember off the top of my head, but it is one of those things that we look at and monitor carefully.

Q61 Mr Bradshaw: Do you not think that with the power of the big American broadcasting conglomerates and social media companies that there is a danger that we are importing American morality rather than fighting for British values and British morality, which is much closer to continental Europe in most ways?

Ed Richards: That is beyond our remit, but clearly—if I think beyond our remit for a second—that problem or that issue exists and, in a sense, it is a form of cultural view, which is through corporations—

Dame Patricia Hodgson: It is not totally beyond our remit in the sense that a very great deal of the definitions for public service broadcasting is about UK originated programming, which is not only about the economic impact but it is about reflecting our own culture, developing our own culture. Because UK generated programmes are enormously popular—and we could probably give you the statistics for viewing numbers—it tends to be people’s main engagement with the television and a lot of what we are researching about attitudes is our own culture talking to us. Of course, people have very different views. I am sure if we engaged in a particular debate about any aspects of either that issue or elements of violence or sex on television there would be very different views around the table, which is why the research, keeping it up to date and trying to fulfil the statutory obligation—which is to seek generally accepted norms—is a nightmare but it is done probably least worst through this kind of process.

Ed Richards: I would not worry about it on broadcasting for those reasons. The strength of UK interest in UK content with UK values and UK norms is greater now than it ever has been. If you go back to when I was growing up, we all watched “Dukes of Hazzard” as the prime time viewing.

Dame Patricia Hodgson: Or if you are even older, “Wagon Train”.
Ed Richards: You could not get that in the schedule in the UK now because we want British content, British drama, so that is a big step forward.

Dame Patricia Hodgson: Look at the ITV schedules and that is commercial.

Ed Richards: As far as Facebook are concerned and organisations of that kind, the answer to that is that you should invite them in and ask whether it is appropriate to have global standards for that kind of cultural norm or whether it would be better to have regional ones, which reflected differences, because there clearly are differences of that kind. There is no doubt about that.

Mr Bradshaw: Thank you, Chairman, for your indulgence.

Q62 Chair: Can I ask you about another aspect of the broadcasting code enforcement? You will have seen reports at the weekend about the new version of Russia Today. The Sunday Times had a headline, “A satellite Kremlin on British TV” and said in their report, “What was the surprise was how blatantly partisan the news was. The experts and commentators were unapologetically Putinesque in their interpretation.” Now you obviously have a duty of enforcing the broadcasting code. Is this causing you any concern?

Ed Richards: Russia Today has been here for about nine years. We have recorded nine breaches in relation to Russia Today already. I should not go too far this morning because we have a number of outstanding investigations into Russia Today that we are looking at right now. Because there have been previous breaches obviously that will be a factor should we find them to be in breach again. The broader picture here is we regulate 1,000 different television services. Again, you go back to when we were growing up. It would have been five, four, three. It is 1,000 and it grows every single year. Those services come from all over the globe. Roughly half of them are not targeted on the UK audience. They are just services directed at another country, with another purpose, but they licence in the UK and they satellite broadcast and so on.

Chair: But they are based here?

Ed Richards: It varies. What we require is that if they have a licence here they must demonstrate that they have editorial control here. But they may have operations as, for example, Discovery do all over the world. The notion of being licensed here and being a global operation is quite normal. What has changed is that you do have this vast array of services, which have very different purposes, very different focuses, very different funding. We have to deal with that. The approach we have taken thus far is to make sure that we are enforcing the broadcasting code, because that is what we are here to do and that is a crucial part of what being a UK broadcaster is. Make sure that we remember the importance of freedom of expression in the UK and to the UK system. But also be mindful of our duties in this area of concern, which are due impartiality and due accuracy—I emphasise the “due”—not to create an escape clause or anything or a qualification, but because it allows us to differentiate a little between those services that are targeted at a different country and achieve an infinitesimally small audience in the UK, and frankly
nobody is watching, and those services where millions of UK people are watching it.

A great example of that—the most obvious one—would be Fox News and Sky News. Ultimately owned by the same company, but Fox News is an American service targeted at Americans; they just run it over here as an additional service. Sky News, a UK service, is targeted at the UK. We have the highest standards and expectations for Sky News and they are very good; in my experience they have been excellent. We have a sliding approach, obviously, to Fox News. Russia Today historically has been closer to the Fox News context. If it starts investing significantly and targeting the UK and—

Chair: Both those things seem to be happening now because this new version is clearly targeted at the UK.

Ed Richards: That is why we need to be aware of that. We need to be mindful of that and we need to adapt our approach to this in that light. It is about taking account of due impartiality and due accuracy, but I would reiterate we have found them in breach in the past. We have outstanding investigations in play right now and, if necessary—I do not want to prejudge anything—we will apply the sanctions that are appropriate to any breaches because ultimately we have to uphold the broadcasting code and we have to uphold our commitment to freedom of expression.

Q63 Philip Davies: Could I just ask in advance of the world radio conference next year what the UK’s position is on reserving spectrum for broadcasting?

Ed Richards: There are a couple of issues here. There is one, which is the use of 700 MHz, which we are currently consulting on. Our proposal is that that will become a mobile service, but we will make sure that there is plenty of sufficient spectrum for broadcasting in terrestrial form to continue and to continue effectively. There is then a further question about the 600 MHz band and the issue there in global form is whether it is earmarked for potential mobile use as well. My understanding is that we take Government’s guidance on just the specific, narrow issue of the UK. We represent the UK in these global conferences because we have the technical knowledge, which is necessary, but we take guidance on the UK vision. My understanding is that the UK Government have said that they are not going to support what is called co-primary allocation, which if you are in the broadcasters’ camp on this particular issue diminishes the likelihood that it will be switched to mobile use in that area. The position is relatively clear and we are comfortable with that.

Q64 Philip Davies: What are you doing to try to get support for Ofcom’s position among other member states?

Ed Richards: Again, rather like the European question earlier, that is a permanent and ongoing activity. The global radio conferences are many years in the planning. They have committees that go on for months and years and you have to be constantly vigilant and seeking to influence those processes in order to secure the case objectives. We have a small number of people who
spend quite a bit of time working on precisely those issues. I believe, and hope, that we punch above our weight and we are exercising the kind of influence in those international fora that the UK would expect us to.

**Q65 Philip Davies:** In those preliminary discussions, are you confident that Ofcom’s view will prevail?

**Ed Richards:** We can be optimistic about that view because we know there are plenty of other countries who have common cause with us on it. That is for sure. I do not think we can guarantee that our position will hold because it is an international conference and you have to command the majority to achieve the coalition to win that position. But we are optimistic about that and if I had to take a punt on it now I would say we could be reasonably confident about that.

**Q66 Philip Davies:** Do you think that the current broadcasting system is constrained by EU rules for the moment?

**Ed Richards:** The current broadcasting system?

**Philip Davies:** Let me give you an example. Do you not think it is time to completely reform the Audiovisual Media Services Directive in Europe in order to free up the UK’s successful television industry?

**Ed Richards:** It is definitely time to look at it and it is definitely time to review it, and it is definitely time to start that process, in my view. I will mention something else in a moment about that. I would not describe it as a desperate burning bridge. It is time to look at it and we do need to revise it and there are big issues that will need to be addressed in due course. Some of the content protection issues that we have been talking about are good examples of that. Yes, the time is right but if you are asking whether I think there is a massive problem that needs to be solved tomorrow, I do not think you could sustain that argument. It is just in the sweep and cycle of legislation, keeping up with technology and change and markets. It is time to have a look at it and we have initiated some pan-European discussions on that with our colleagues in France, and we have helped create a European regulators group to make sure that we can discuss these matters and give some sort of coherent view to the Commission as it starts that process.

**Q67 Philip Davies:** Is there anything more that Ofcom thinks could be done to deregulate the broadcasting market at a European level?

**Ed Richards:** There are a range of things that one could look at for deregulation. Most of them we would want to look at very carefully because wherever one thinks about some of those deregulation options there usually may be a concern from the public and the audience about what that might mean. Let me give you an example. The separation between content and advertising, which I think people generally feel is a good thing because you know what is content, what is editorial and what is advertising, but you could deregulate that. I think you would get an audience reaction to that, which would be not necessarily positive. So that is one example. There are other
examples to do with the number of advertising minutes allowed. Again, you could deregulate that. I think you would get an audience reaction to that but you would also get an industry reaction.

**Q68 Philip Davies:** If you get an audience backlash, and you are a commercial broadcaster, surely those commercial broadcasters would then give the audience what they wanted and demanded. You do not need all of the regulation in order to do that. Surely the broadcasters would do that themselves if there was an audience backlash?

**Ed Richards:** I am familiar with that laissez faire argument in this context. On one level, you would think it might work and it is intellectually quite attractive. The evidence in a number of areas where that kind of deregulation has taken place might lead you to be more cautious. An example is the deregulation of advertising in commercial radio, particularly in the States, where you are lucky to get a song played before you get another advert in some circumstances. It is unclear exactly how people would behave and short-termism sometimes interferes with the long-term interest. But, let me be clear, I think all of those things are worth looking at and worth considering.

One of the problems with the advertising deregulation is that there are differences between public service broadcasters and purely cable and satellite broadcasters, and you would hear different views from them on the attractiveness of those kinds of deregulation issues.

**Dame Patricia Hodgson:** There are different solutions already, of course.

**Ed Richards:** There are. So they are all worth looking at, these things—there is no doubt about that. There may well be scope to make some change but there is not one that I could identify where I could say to you honestly and unequivocally that there is no consequence that I would at least want to encourage people to think about carefully before they went ahead.

**Dame Patricia Hodgson:** The process will generate the debate. We will be informed by that.

**Q69 Paul Farrelly:** I am sorry, I have one of my high schools waiting to grill me as well, upstairs in the Committee Room, so I have only time for this one question. Ed, in this current—again it is almost a valedictory—broadcasting situation today can any persuasive case be made for getting rid of “must carry” provisions so that public service broadcasters can have a fair negotiation with satellite and cable companies about charging for their content?

**Dame Patricia Hodgson:** Can I give Ed a moment to think about the answer, while I say—

**Q70 Paul Farrelly:** Did you hear the end of the question?

**Ed Richards:** Just repeat it just in case you missed it.

**Dame Patricia Hodgson:** Yes, sorry.

**Paul Farrelly:** So that public service broadcasters can have a proper negotiation with cable and satellite companies about charging for their content.
Dame Patricia Hodgson: The framework, as you know, which is designed to protect the availability and the discoverability of public service broadcasters and therefore has the “must carry, must offer” and prominence is rule obviously part of this retransmission debate. It must be a matter for Parliament and for Government to decide what the framework should be. As I understand it, the Secretary of State for DCMS will issue a consultation. Ofcom can inform the debate and I think there are some useful and interesting things that we can say.

Q71 Paul Farrelly: I am aware of that so I was just asking you whether, almost as a valedictory, any persuasive case for a change can be made.

Ed Richards: I don’t know the answer to that yet, Paul. The reason for that is this has been one of those issues that has been embedded in a certain form for many, many, many years and people have slightly lost touch with what does and does not happen and what law is or is not in place, and indeed how that law is actually invoked. For example, I think I am right in saying that the “must carry” clause has never been invoked, never been enforced.

So I think what we need to do—and this would be me as much as we—is to step back, unpack what exactly is in place, how exactly that works and make an important distinction between, for example, content charges and charges for carriage on the platform. Then help the Government look at that in the round and say what is a sensible framework, what works, what does not work, what balance do we need to strike, how do we need to privilege and support the public service broadcasters—I believe you should do that—and how does that work as a package, as a whole, for example, with not just “must carry” but EPG positions and things of that nature.

It has become a little bit lost in the mists of time and now is a good time just to step back, unpack it all, see what is there, ask ourselves what the purpose of the policy is and say, does this work? That, I think, is what will happen over the next 12 months.

Q72 Jim Sheridan: Just a couple of brief questions on showing of live football games, especially the English premier league. In my view, there really is only the one source of income in football and that is the fan, whether they pay at the gate, merchandise, television or whatever, and indeed the price for the auction. I wonder what your concerns would be in terms of the auction process. The price for the latest rights governing 2013 to 2016 rose by 70% for three years. That is a staggering amount of money that just went out and certainly The Telegraph has recently reported, for instance, the restrictions for the supply in England. Premier league rights are the most expensive in Europe with BT and Sky Sport paying £6.5 million per match compared to £2 million in Europe. The fans are getting a raw deal. Can Ofcom do anything to help the ordinary punter, shall we say?

Ed Richards: We are looking at this very issue again and we are conscious of those numbers, they have gone up by an enormous degree. That is the product of the bidding in the last round. Prior to the last round we did introduce a regulatory intervention to require the football to be made
available, a wholesale “must offer” intervention, which is quite a complicated intervention but I think it is the right thing to do.

We are still defending that in the courts. We have just had a victory on that in the Supreme Court, which we are very pleased about. We are now looking at new complaints about this very issue, and indeed one that asks us to consider intervening upstream, and we are currently looking at that, so if you do not mind I will not go any further on where we might end up, but I am very conscious of the rise in prices. I am very conscious that ultimately the consumer, the football fan, is going to have to pay for that. There is no question about that. They are not going to be handed out for free and therefore there is likely to be pressure on the prices that fans pay.

There is not a simple equation. Some of that money may be recouped in different ways and so on. Obviously the premier league are able to sell their rights in the way that maximises their revenue so long as it is compliant with the law and with any regulation. That is what happened last time and we need to now look at those competition issues and act if we think that is appropriate in the consumer’s interest.

**Dame Patricia Hodgson:** It is worth pointing out that the court judgment—it was a positive one—came after four years of litigation and that the initial decision by Ofcom to intervene and to require the “must offer” has obvious implications for the value of the events that are being offered and there has been that delay, a four-year delay.

**Ed Richards:** In the context of this being my last meeting, it is safe to say we were, to use an understatement, very disappointed. When after three years, with very careful consultation and process, and with great care, we reached a decision that we thought was a very carefully considered one, which protected both the value of the rights to football but also made sure that competition would ensue. After two and a half years that decision went and sat in courts. The Competition Appeals Tribunal then made a decision overturning us and saying we had got it wrong. It was at that point that BT felt it had to bid for those rights and it was at that point that the prices rose 70%, not necessarily causally related—you would have to ask BT—but it was at that point that happened. It has then taken us a further year or more to have that decision overturned. So the Competition Appeals Tribunal decision that we had got it wrong has now been thrown out. Their decision has been found to be wrong. That has now been confirmed by the Supreme Court.

My sense of serious regret about that is that has taken nearly four years in which everybody has just been wheel spinning. In the interim time, while that has happened, the rights have gone up by 70%. I am not saying that would not have happened if we had just stuck with the proposals that we had taken three years to produce, but it is possible. So that is where we are.

We continue to pursue this in the courts at present. There is another issue before the Competition Appeals Tribunal at the moment that is relevant to it, which is about the extension of the wholesale “must offer” to IPTV, which we think would be the right thing to do. We hope we will reach a good conclusion on that. Now we have, as a result of what has happened, a new complaint about the way the rights are sold.
So this is a difficult and complicated area where I think we did the right thing three or four years ago but it has taken us all this time and we are still not at the end of this issue. It is still not resolved.

**Q73 Jim Sheridan:** Just on the question of BT, is Ofcom concerned on any safeguards that would stop state funding given to British Telecom for broadband being used to subside a bid for football?

**Ed Richards:** Yes, and we have looked at that risk carefully. What you are concerned about is BT Openreach enjoying inflated revenue and inflated profit, which are then used to cross-subsidise the acquisition of sports rights. We have had a look at that and we do not see evidence for that at the moment, partly because we control the prices of BT Openreach ourselves. What appears to have happened is that BT retail—so the retail arm—has made those decisions and has funded those acquisitions out of its business. We have checked very recently that they are doing that in a way that is consistent with competition. We have looked at that under the Competition Act and we found that they were doing so.

So it is a very legitimate concern, it is a very fair question, it is one that I am sure we will keep under review but at the point in time that we have looked at it recently we found that they were acting reasonably.

**Dame Patricia Hodgson:** It brings us back to the discussion we had earlier about the importance of the separation between BT infrastructure within Openreach and its business retail and wholesale services. While it is not a walk in the park to monitor funds flow, it is easier when there is that separation. It is a protection for everybody, BT included.

**Chair:** We have a few more detailed and technical questions that we might send to you but I think we have probably finished for this morning. Thank you both very much for coming and, Ed, I hope we might see you again, maybe in a different capacity—who knows?

**Ed Richards:** Thank you very much, Mr Chairman.

**Dame Patricia Hodgson:** Thank you.