

# CABLE&WIRELESS RESPONSE TO OFCOM DRAFT ANNUAL PLAN 2009/10

Cable&Wireless

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Cable&Wireless welcomes the opportunity to respond to Ofcom's consultation on its Draft Annual Plan 2009. We find it a useful process to be given visibility of Ofcom's proposed work programme for the next twelve months, however as we have commented in previous years we would like to see more detail set out in the plan itself including firmer timescales of when certain work programmes will be carried out.

Generally we consider that the three year strategic framework for the proposed work programme in 2009/10 remains relevant, in particular the promotion of competition and innovation in converging markets and supporting the evolution of legal and economic frameworks for communications regulation.

We welcome Ofcom's commitment to conduct new areas of work that will focus on business markets. In particular we welcome Ofcom's plans to assess the extent to which competition is addressing the specific needs of business users, however, we would like to see more detail of what Ofcom is actually planning in this area. This sector appears to be frequently overlooked in comparison to the focus given to consumer issues and we are thus pleased to see that business markets have been included as an element to be contained within the new strategic framework.

We note that Ofcom has some reserved capacity for dealing with unexpected issues that may arise over the next year. However, we remain concerned that Ofcom do not appear to have any intention of increasing current resources for dealing with the increasingly important area of dispute resolution.

There appears to be an increase in companies' reliance on Ofcom to resolve issues that commercial negotiations have failed to resolve in addition to ensuring compliance with SMP obligations. In addition Ofcom's bias against proactive intervention combined with increasing deregulation, which in some cases we believe is premature, is likely to result in an increased reliance on dispute resolution. This will inevitably have an impact on Ofcom's resources.

It is important to note that communication providers do not submit disputes lightly given the internal and sometimes external resources required to prepare a dispute submission, and we recognise that this aspect of Ofcom's work is also very draining on resources for Ofcom. We believe that it is important for Ofcom to ensure that this vital function and exercise of its statutory duties should not remove resource from other important areas of Ofcom's work. Accordingly we are of the view that additional resource should be made available where necessary to ensure that Ofcom can deal adequately with its work programme but is also able to deal effectively with disputes which are submitted to it. We note that this area of work is not mentioned within the draft Plan and would be keen to understand how Ofcom intends to fully resource this area going forward.

The concern is that if resources are stretched within Ofcom attempts may be made to encourage communication providers to seek resolution of issues via Alternative Dispute Resolution (ADR) even where this is not necessarily an appropriate means for dealing with an issue. While we are happy to work with Ofcom to help explore alternative means of resolving issues where appropriate, we remain of the view that in a significant number of cases dispute resolution will be the preferred means of resolving an issue. While we acknowledge that it is difficult to plan for the number and complexity of disputes which may be submitted over a given period, it is clear that sufficient resources need to be made available to ensure Ofcom are able to deal with disputes in an appropriate way without compromising delivery commitments under the work plan.

We note that Ofcom recognises that the current economic difficulties may increase incentives for misconduct aimed at taking advantage of uninformed consumers. However we also believe that it is essential that Ofcom recognises that the current economic difficulties may also mean that there is an increased potential for competition within key business markets to be squeezed to the ultimate detriment of business users. Accordingly, it is essential that Ofcom ensures compliance with SMP conditions to ensure that market conditions are not exploited or that other practices do not emerge which are detrimental to the market. Failure to diligently enforce SMP conditions will result in reductions in innovation and choices for business users. In the long run this will also impact prices which in turn is damaging to the economy .

If you would like to discuss any of the issues raised above please do not hesitate to contact Sian Evans on 07831 170574.