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Date: 12 February 2009

Dear Marco

### **Ofcom Draft Annual Plan 2009/10**

I set out below SSE's response to the questions in the recent consultation on the above topic.

#### ***1. What are your views on the continued relevance of Ofcom's three-year strategic framework for the proposed work programme in 2009/10?***

We believe that the headings set out in the strategic framework continue to capture the correct areas of focus for Ofcom activity in the current year. However, we agree with Ofcom that a new strategic approach would be appropriate, as discussed in answer to question 3 below.

#### ***2. What are your views on Ofcom's proposed policy work programme and top priority areas for 2009/10?***

With SSE's background in providing retail communications services, the following four stated priorities for 2009/10 are of particular interest to us.

- **Promoting competition in fixed telecoms**  
We welcome Ofcom's continuing attention to this important subject and the focus on ensuring equivalence and functional separation where there are bottleneck assets such as the BT Openreach access network. Ofcom's involvement in imposing service level guarantees (SLGs) on Openreach during 2008 was welcome and we agree it is timely to consider a review of the effectiveness of the SLGs and the actual experience of Openreach customers. We also support Ofcom's continued monitoring of BT's 2005 Undertakings and agree it is very important for the spirit of these to be maintained as the next generation core and access networks are developed. The review of the narrowband network charge control (i.e. Openreach costs and charges) should provide an opportunity to establish greater transparency of the functionally separate part of BT that is providing services on an equivalent basis to both BT and other communications providers in the market.

Under this heading, we note Ofcom's concerns about automatic renewal of contracts with subsequent minimum contract periods in its recent statement on additional charges, where the comment is made that such terms may bring

consequences for competition and switching. We therefore agree that Ofcom should consider these charges further.

- Enabling clear regulation for next generation access (NGA) and core networks  
We appreciate the efforts that Ofcom is making to set out regulatory principles for the development of NGA such that competition in both infrastructure provision and service/content provision is feasible. We agree that new detailed issues in this area are likely to arise and can also see that consideration of the overall framework for NGA broadband provision overlaps with government's work on the Digital Britain project. We support Ofcom's intention to continue to review and respond to developments in this area with a view to promoting competition, interconnection and maximum consumer benefit in the transition to these new technologies.
- Assessing our regulatory approach in mobile  
We have responded to Ofcom's initial consultation in this area and would hope to see the regulatory and market framework develop to accommodate a greater choice of communications provider. In particular, we believe it would be beneficial for competition and for the end-customer experience if a migration process, allowing the customer to port their number to a new network or supplier, was in place. We also believe that contestability of investment, building on access to and inter-operability with existing mobile network infrastructure would encourage other investors into the market. We strongly believe that, rather than regulation becoming an obstacle to innovation and competition (as Ofcom suggests could occur at paragraph 5.22 of the document), there actually needs to be a degree of regulation for access and governance in order to promote competition and innovation.
- Developing and enforcing consumer empowerment and protection policies  
As we noted in our response to last year's proposed plan, we continue to believe that the project under this heading on switching and mis-selling is the single most important area of Ofcom's work with respect to the retail communications market. We agree that there is detriment to customers in the present set of uncoordinated switching processes, some of which require end customers to make a number of different contacts with their existing provider, particularly where "bundles" of services are involved. The situation also represents a barrier to entry and is likely to get worse with the trend towards further convergence and bundling of products and services. We urge Ofcom to move to the implementation stage of this project as quickly as possible and to consider the benefits that an industry-owned process to maintain and develop the arrangements would bring.

The work on fixed-line voice mis-selling is also mentioned under this heading. As noted below, we have supported Ofcom's references in previous annual plans to its review of General Conditions (GCs): we would hope to see a reducing burden of prescriptive regulation as the more detailed GCs are made more "high-level". We hope that Ofcom's revisiting of the GC on prevention of mis-selling of fixed-line voice services will take this approach and avoid both continuing the current prescriptive mandatory guidelines and the introduction of any other detailed prescriptive requirements.

We also have comments on one of the additional projects that Ofcom has set out at paragraph 5.56 of the document:

- We support a review of Ofcom's strategic approach to the numbering plan. We note that obligations on suppliers due to numbering issues have become more detailed and prescriptive over the last few years. Consistent with our views expressed above, we believe that numbering-related obligations on suppliers could benefit from a more "high level" approach as well as a rationalisation of where such obligations lie – at present, obligations are set out across both the "Numbering Plan" and GC17.

### **3. What are your views on the elements which should be contained within Ofcom's new strategic framework?**

We agree with Ofcom that the time is right to consider a new strategic framework for developing its work programme. As noted in the consultation document, the themes of the government's Digital Britain interim report suggest that a new regulatory approach might be needed (possibly underpinned by legislative change) in order to secure the anticipated benefits of next generation broadband deployment for citizens of the UK.

Considering the key areas of focus that Ofcom has already identified, we believe that changes should be considered to the direction of Ofcom's work in two of these:

- Promoting competition and innovation in converging markets; and
- Empowering citizens and consumers and improving regulatory compliance where necessary.

The framework for competition and innovation that Ofcom should, in our view, seek to establish would have the following characteristics:

- Greater clarity around the distinction between the role of communications infrastructure provision and communications services (and content) provision over those infrastructures and around the regulation appropriate for each type of "communications provider";
- Inter-operability between communications infrastructure platforms (fixed, mobile, cable) established and maintained such that mass-market communications services (voice, data, content) can be delivered technically and commercially across all types of access infrastructure to any consumer;
- In order to achieve technical and commercial inter-operability, we believe that regulation for wholesale access to communications access infrastructures (including mobile networks) of sufficient size and scope serving mass-market customers would be necessary – this would allow innovation in service provision using the infrastructures;
- A coordinated switching process for mass-market end users so that these consumers can readily exercise their choice to move between different suppliers of communications services;
- Industry-led governance processes to allow for coordinated industry maintenance and development of mass-market arrangements, with Ofcom oversight of these through a co-regulatory mechanism (particular areas where we believe this would be beneficial include: customer switching and other migration arrangements; number portability and other numbering issues; next generation access developments; and potentially universal service administration including supplier of last resort arrangements);

- Contestability of access infrastructure developments, with a clear framework as to how new developments establish connectivity and inter-operability with existing infrastructure.

In order to empower citizens and consumers the key requirement, in our view, is the development of an easy-to-use and coordinated switching arrangement as noted above, supplemented by sufficient customer information on how this process works. We also suggest the following characteristic of the regulatory framework would assist Ofcom in improving regulatory compliance:

- A framework of General Conditions which are clear about the type of Communications Provider they apply to (infrastructure provider; supplier; content provider; numbering provider etc) and which are expressed as clear high-level obligations with associated non-mandatory guidelines where appropriate, in line with better regulation principles and the aims of the project to review and simplify General Conditions that Ofcom has referred to in previous Annual Plans.

I hope these comments are of interest and we would be happy to expand on them, particularly as Ofcom develops its new strategic framework, if that would be useful.

Yours sincerely

Aileen Boyd  
Regulation Manager