

Ofcom Draft Annual Plan Consultation response on behalf of the Welsh Assembly Government

The Welsh Assembly Government welcomes this opportunity to comment on Ofcom's Draft Annual Plan for 2009/10. In general, we are broadly supportive of the approach suggested by Ofcom in this Annual Plan and look forward to working with Ofcom on the proposed consultations and projects for the forthcoming year.

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

Telecommunications

The Welsh Assembly Government agrees with Ofcom's proposed work programme for telecommunications for 2009/10 and accepts that the previous three-year strategic framework developed in 2006 represents an appropriate basis for ongoing work this year, whilst Ofcom considers the development of a new strategic framework. However, the time is now right for Ofcom to consider fundamentally changing its approach to regulation to reflect the impact of convergence.

Any new framework should concentrate on the competitiveness and availability of end services to businesses and residential consumers, regulating underlying markets (across the value chain) as flexibly and holistically as possible to ensure maximum benefit to consumers across the UK. Identification and assessment of the value of both emerging and existing services should be done regularly to ensure relevance of regulation.

We believe that the time is right now for a change in thinking and to move away from the traditional focus on the *delivery* of telecoms services. Instead, Ofcom should focus on the ability to *use* these services effectively and in a manner that is beneficial to the economy and society. Ofcom should be focusing on the drivers for users of telecoms services and using these drivers to develop and provoke an appropriate regulatory environment.

The Welsh Assembly Government welcomes the proposed continuation of work on spectrum release, next generation access and mobile. With regards to next generation access, the Welsh Assembly Government urges Ofcom to provide clarity on the regulatory environment through the publication of its regulatory statement as soon as possible.

Broadcasting

The Welsh Assembly Government welcomes Ofcom's continuing emphasis on ensuring the delivery of public interest objectives. The Welsh Assembly Government has recently submitted a response to Ofcom's consultation on public service broadcasting and in particular welcomes Ofcom's commitment to support the government of the UK and the devolved nations in implementing an agreed settlement. As part of our response to Ofcom we included a report by the Advisory Group on broadcasting established by the Minister for Heritage which examined a range of options for ensuring that English language television programmes from Wales continue to offer plurality to viewers with regard to news, current affairs and general interest programmes. The Welsh Assembly Government believes that the Advisory Group report provides a compelling case for change which should inform Ofcom's work in this area moving forward.

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

Telecommunications

The priorities described in the Draft Annual Plan for telecoms are in line with the policy direction of the Welsh Assembly Government. The proposed priorities for spectrum release, fixed telecoms competition, NGA regulation, mobile regulation, and access and inclusion are of particular relevance.

Releasing spectrum – We believe that it is important that the work already carried out on the release of spectrum and the Digital Dividend Review is concluded as soon as possible. Availability of competitive, ubiquitous converged services is dependent on the conclusion of this work and, in particular, the growth of mobile services, including broadband, is of interest to Wales where both mobile and broadband services are lacking.

Promoting competition – As mentioned in our response to the NGA consultation¹, we believe that the core and access markets need to be regulated differently. The ways in which this can be achieved through geographical and technical definition are outlined in our response to the Business Connectivity Market Review². The principle of equivalent access to core and access network products remains fundamental to ensuring effective competition.

The Welsh Assembly Government welcomes Ofcom's decision to focus on the business market as a consumer of broadband services and recognising that business needs differ from citizens needs.

Next Generation Access – Regulatory clarity is needed on this issue in 2009/10. Ofcom should publish its regulatory statement and action plan in this period.

Regulatory approach to mobile – we welcome Ofcom's work on the regulatory environment relating to mobile networks and look forward to responding to the next stage of Ofcom's mobile market review. However, we believe there are areas of the mobile market that do not require any further consultation, specifically the issue of emergency roaming agreements. As stated in our response to the Mobile Citizens, Mobile Consumers consultation³, Ofcom should urgently consider the need for a change in regulation to address the emergency roaming situation that currently exists. Given that emergency roaming already exists as standard in other European countries, it is not acceptable that this situation does not apply to the UK. Ofcom should also consider revising the mandating of national roaming agreements, if engagement with industry does not deliver this within a reasonably short timescale.

Access and Inclusion – The Welsh Assembly Government has proactively called for a review of the Universal Service Obligation in recent consultation responses. We are pleased to be contributing to the current EC debate on broadband access and are currently working with UK Government on this issue as part of the Digital Britain review. We believe that a broadband USO debate is fundamental to tackling the issue of broadband notspots, especially in rural areas and will continue to work with Ofcom, UK government and the industry on this matter.

¹ http://www.ofcom.org.uk/consult/condocs/nga_future_broadband/responses/WAG.pdf

² <http://www.ofcom.org.uk/consult/condocs/bcmr/responses/wag.pdf>

³ <http://www.ofcom.org.uk/consult/condocs/msa08/responses/welsh.pdf>

Digital Inclusion – The Welsh Assembly Government has actively supported digital inclusion for some years. We note that Ofcom differentiates between geographical availability and take up of services and technologies. The Welsh Assembly Government would welcome the opportunity to work with Ofcom to encourage engagement with technologies, as we are already doing with the UK Government. We regard measures to tackle digital inclusion as central to any programmes of media literacy.

Consumer protection – We welcome the recent Ofcom publications on broadband speeds and the Code of Practice for Internet Service Providers and believe that these will go some way towards ensuring that consumers are receiving the broadband service that they want. However, in order for the effectiveness of these publications to be maximised, Ofcom should ensure that the Code of Practice is implemented and monitored effectively. This will feed into the proposed project for 2009/10 on mis-selling and switching, which, again, is welcomed.

Broadcasting

Preparing for the future of public service broadcasting – whilst the Welsh Assembly Government understands the rationale for Ofcom changing the nature of the ITV licenses in order to allow ITV to reduce the requirements for scheduling local/regional programmes, the Welsh Assembly Government is concerned about the future of the regional news and non-news programmes in the English language in Wales and the general issue of plurality of news provision. We would therefore urge Ofcom to look closely at these matters as part of the work being undertaken on Digital Britain.

The Welsh Assembly Government welcomes Ofcom's focus on the evolution of radio as a key work area, and hope that through the work of considering what form any further community radio licensing might take, Ofcom would achieve a simplification of the licensing process, thus making it easier for community groups wishing to set up a community radio station.

The Welsh Assembly Government welcomes the focus on promoting media literacy, and wishes to work closely with Ofcom in achieving this goal in Wales. The Welsh Assembly Government supports the work that S4C has been undertaking in relation to media literacy.

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

Telecommunications

The work currently being carried out by UK Government on Digital Britain should be used to inform the basis of the next strategic framework. The Welsh Assembly Government is interested to understand exactly how Ofcom intends to work with UK Government to inform the work being undertaken on Digital Britain.

A key message that the Welsh Assembly Government would like to see included as part of the new strategic framework is a commitment from Ofcom to review the way in which the core and access telecoms markets are regulated adopting a more holistic approach as described earlier. This approach works well in a number of other markets and if Ofcom chooses to ignore lessons from other markets where different regulatory approaches have been successful, Ofcom will constrain its ability to design a forward-looking regulatory framework that is flexible enough to adapt to changing circumstances.

The likely deployment of alternative, open access backhaul networks may allow others to invest. An approach not predicated on existing principles might allow for more creative solutions to be developed which are flexible enough to cope with the possibility of rapidly changing market dynamics. We recognise that convergence will progress but also the underlying core network markets will change as backhaul is deployed. Regulation designed to encourage the deployment of alternative, open-access NGN and NGA infrastructure, thereby stimulating competition in the core and access markets, might be a more constructive approach. We recommended in our response⁴ to the Wholesale Broadband Access review that Ofcom adopt a regionalised approach to regulation in future moving away from traditional exchange areas, especially in areas of persistent market failure. Options such as geographically targeted, time-limited forbearance may encourage investment in these areas, although it is likely that economic and social inclusion in these local markets would be achieved at the expense of competition, and that pricing would reflect lower population density and above average deployment costs.

As always, the Welsh Assembly Government is happy to discuss this response further with Ofcom if required.

⁴ <http://www.ofcom.org.uk/consult/condocs/wbamr07/responsesother/wa.pdf>