

## **DRAFT 2**

### **Draft Annual Plan, 2008-2009**

#### **BUSINESS IMPACT STATEMENT**

Enterprises of all sizes and in all sectors have long depended on reliable, effective connection to communications services. The larger enterprises usually employ specialist managers in the ICT disciplines, even where the management and provision of their networks and systems are outsourced – often to suppliers. But the use of in-house, professional expertise is not normally found in the majority of medium-sized enterprises and is certainly extremely rare in smaller companies, where the owner or manager has neither the time nor the inclination to involve himself deeply in the provision or management of ICT facilities, notwithstanding their benefits.

The strategic framework underpinning the draft annual plan identifies the need to “improve empowerment, protection and enforcement for citizens and consumers”. The plan – for the third year running – fails to make it sufficiently clear that, in the context of the plan, Ofcom regards the category of “consumer” as embracing business as well as domestic users. The triad of “empowerment, protection and enforcement” applies differently to different sizes of business, with the larger enterprises already empowered by virtue of their market influence and needing little in the way of protection. They require only that the regulator ensures an effective choice of service, offered at a fair price and of acceptable quality, something that is well within Ofcom’s gift as a natural consequence of the enforcement of sound policies. At the other end of the scale the interests of the small company are represented in the Ofcom Consumer Panel – when general consumer law doesn’t take precedence. It is the middle tier – the medium-sized enterprise – where the impact of any shortfall in Ofcom’s approach is most keenly felt and where an appropriate mix of “empowerment, protection and enforcement” is most likely to have maximum effect.

Overall, the plan largely ignores the impact of converged regulatory policy on the economic health of the nation and focuses extensively on the needs of the citizen-consumer, especially in the area of entertainment. Business users, once again, feel short-changed.

#### **Summary**

The needs of the citizen-consumer are not necessarily identical to those of the business consumer.

CMA is concerned that, for the third year in succession, Ofcom’s draft annual plan is more focused on the needs of the citizen-consumer than on the enterprise and centres on issues within the entertainment industry rather than on the wider economic benefit to UKplc.

We suspect that the research that has underpinned the plan largely overlooks the views of the business community.

We welcome the message that Ofcom is considering the benefits to society of improved access to services and we point to the economic benefits.

Ofcom’s generalised approach to universal service might be better defined in separated terms of access and services.

We are concerned that the search for efficiency within Ofcom staffing levels has gone too far and effectiveness has begun to suffer.

CMA members want a seamless ICT market in the EU: the Commission’s proposals in this area are supported as being in the best interests of UKplc but we are not sure that Ofcom shares our view.

We regret that we are unable to endorse the draft plan in its present state, in that it fails to acknowledge and address specifically the needs of the enterprise community.

## Background

In our response to last year's annual plan we pointed out that the consultation was important to enterprises of all sizes and in all sectors because it set out very clearly Ofcom's regulatory concepts and intentions for the next year or so. However, the draft plan contained no acknowledgement that the needs of enterprises differ from those of the citizen consumer, nor was there even any recognition of their existence. We reminded that the omission was significant because Ofcom has repeatedly said, at senior level and from public platforms, that its understanding of the term "consumer" includes the category of business customer. However, the draft annual plan manifestly did not reflect such assurances. In fact, it was explicitly aimed at the domestic consumer and the citizen. We asked for some redress. In fact, we went further by pointing out that this was not the first time we had felt obliged to comment on this distortion and we did so again with increased emphasis. In short, we said we could not accept the plan as presented. We regret we must convey the same message again: we cannot accept the 2008/09 plan as presented.

We suggested to Ofcom that they have more explicit duties associated with UK competitiveness, innovation, sustainable investment, quality and capability improvements, as well as meeting a broad range of customer needs.

We provided Ofcom with some practical illustrations where we believed the interests of the enterprise user differ from those of the citizen-consumer and how promotion of the former will benefit the latter. (We made it clear that "enterprise" means businesses of all sizes and in all sectors both public and private, other than the suppliers of communications goods and services).

In response Ofcom's CEO accepted our points and confirmed that the final version of the Plan would be amended, when eventually issued, as we had requested. His concluding paragraph read:

"We believe, therefore, that our programme of work for 2007/8 will deliver substantial benefits for businesses, as well as individuals. Nevertheless, we acknowledge the need to be more explicit about this in the final version of the Annual Plan and welcome your suggestions about how this could be achieved."

It is deeply regretted that "the need to be more explicit about this" has yet again been overlooked in the 2008/09 version of the plan.

## Detailed Comments

Our comments are offered bearing in mind that delivery (as distinct from statement) of policy is our primary concern.

General The draft plan is based on the acknowledgement of convergence - rightly so in our view: we changed our name from TMA to CMA some 8 years ago. However, the plan revolves around the impact of convergence on the citizen-consumer and it fails to recognise sufficiently that convergence is also enabling the restructuring of commerce and industry – through decentralisation and globalisation, increasing incidence of working from home, increasing demand for access capacity in order to exploit new services and improvements in efficiency through converged mobile devices.

There is no indication in the draft plan of how Ofcom has arrived at its set of priorities – whether the process has been subjective, responsive to the current political wind, or based on comprehensive research. It has been suggested to us (by Ofcom) that priorities are based on research carried out in support of "The Consumer Experience". If so, that merely

compounds our fears, in that “The Consumer Experience” has nothing whatsoever to do with the needs of enterprise; it exclusively and comprehensively reports on the reactions of the domestic consumer. Unless Ofcom is able to assign an economic value to its choice of priorities it is open to question that its choice is correct and that appropriate resources have been allocated.

A response to CMA’s internal consultation on the annual plan illustrates this issue in the context of an SME:

“I have been assisting a neighbour's business with a site move. Frankly (*name of telco*) (particularly their franchised operation (*name of company*)) have been horrendous - lots of mistakes, several changes of personnel/buck passing when mistakes came to light etc. Most businesses would not know where to start and they would give up, rather than waste even more time resolving things, leading to paying (*the telco*) more than they should and not getting the products or services they asked for. I have reasonably reliable time estimates of what the impact has been and hence what the underlying cost of the "cock up". This is I feel a key underlying reason as to why many small businesses don't exercise their theoretical market power - it's all too complicated and time consuming.”

Ofcom has a shared responsibility to facilitate and promote maximum economic benefit to UK plc and it can best do this by recognising that the ICT needs of business differ from those of the citizen-consumer.

Paras 3.7 and 3.8 We are not entirely convinced that Ofcom’s pursuit of evidence-based analysis of the priorities for the year ahead is based on sound data. We suspect that the research carried out in this area has not included, to sufficient extent, the business community – a current example of this apparent omission is in the consultation on WBB, where we question whether the retail market definition has been arrived at correctly. It is by no means evident that the research was aimed at identifying whether the business broadband (or VPN) market and the residential broadband market are significantly different. The implication is significant. For example, it might be shown that BT has SMP in the business market.

Ofcom's overriding concern appears to be increasingly related to its public image, especially on any topic that is likely to have a negative public impact; for example, the TV phone-in scandal. Issues that affect businesses, such as the Openreach SLA/SLG issue and the confusion over 087x regulation, appear to take much longer to be addressed. Perhaps this is a sign of the times, but it still does not sit well with business users.

Paras 3.11 and 3.12 We welcome the carefully-phrased message contained in these paragraphs, with the exception that the arguments deployed are based exclusively on the social outcomes of a more interventionist stance. The economic benefits would be equally, if not more, important. Had the business interest been more clearly accentuated in the Foreword or at the beginning of Section 3, this omission might have been avoided.

Paras 4.43 & 6.19 We are concerned that Ofcom continues to refer to “access and inclusion” as though they still interchangeable in the digital age. They are not: they are the reverse and obverse of the same coin. The issue of universal access via broadband, which has economic as well as social benefits, is not the same as protection of the citizen-consumer, which is the *raison d’être* of the original concept of the USO. Things have moved on since then.

Para 7.22 We propose the addition of a 6<sup>th</sup> bullet: 'changes will be managed with appropriate timescales to ensure businesses are not put at risk'. The 087x changes might

have been managed more effectively, given the right resources: it is still unclear what is going to happen and this makes planning for change difficult. Only businesses with access to good regulatory contacts within industry will have had much insight into what was going on during this process.

Para 8.5 Efficiency and effectiveness do not always make happy bedfellows. We are hearing whispers that Ofcom is now too thinly-spread and issues such as the 087x changes and delays in resolving problems with Openreach are a direct reflection of this. Staff reductions may be a cost saving for Ofcom but the delays they induce then cost UK plc real money. We are particularly concerned about Ofcom's continuing pursuit of annual 5% budget cuts – this cannot continue without serious and lasting damage to the regulator's capabilities. We suggest that Ofcom could enhance its report on the outcome of its annual plan, while feeding the next one, by recording average annual staff working hours allocated to the key sectors of its activity. This would form a valuable link between the assessment of relative priorities and the resources available and allocated.

CMA members are more concerned with Ofcom being effective rather than becoming efficient to the point of incapacity.

Figs 2 and 11 and Para 6.41 The Strategic Policy Framework chart uses the phrase: "maximising our impact on international policy development to best represent the interests of UK citizens and consumers." While this language is probably attractive to the average citizen-consumer it begs the question of how this priority task that Ofcom has set itself will encourage collaboration with global developments to achieve greater consistency in seamless international services. The Ofcom phraseology smacks more of confrontation than of collaboration. Large enterprises need a common market in ICT in order to compete effectively throughout the EU and in this context CMA supports the proposals of the Commission as part of the ongoing Framework Review. In this particular case the business users' understanding of "the interests of UK citizens and consumers" is not necessarily identical with that assumed by Ofcom.

Answers to the four questions posed at the end of the consultation document are embedded in the foregoing comments.

CMA

31 January 08

### **Footnote - CMA's Internal Consultation Process on Regulatory Issues**

Any consultation document (conduc) received by or notified to CMA is analysed initially by the appropriate Forum Leader for its relevance to business users based in the UK. (The majority of CMA's members are based in this country, with a third of them having responsibility for their employers' international networks and systems).

If the document is considered to be relevant to CMA, it is passed, with initial comments, to members of both the appropriate Forum and the 20 or so members of CMA's "Regulatory College" – ie: those members who have experience in regulatory issues, either with their current employer, or previously with a supplier. The CMA Chairman and CEO are also members of the College. The detailed comments from the College are collated by the Forum Leader in the form of a draft response to the conduc. Note: if the conduc has significant international import, the views of the international user community are likely to be sought. This is done through the International Telecoms User Group (INTUG).

The draft response is sent to all 1500+ user members of the Association, with a request for comment. Comments received are used to modify the initial draft. The final version is cleared with members of the appropriate Forum and Regulatory College (and, if the subject of the consultation is sufficiently weighty, with the CMA Board).

The cleared response is sent by the CMA Secretariat to the originating authority. It might be signed off by the Leader of CMA's Regulatory Forum, and/or by the CMA Chief Executive and Chairman.