

INTRODUCTION AND GENERAL COMMENTS

Cable&Wireless welcomes the opportunity to comment on Ofcom's Annual Plan. We believe that it is an important process for Ofcom to consult with all stakeholders on its proposed focus and strategy for the coming year. However, in our view the process would be better served if more detail was provided on the deliverables for the forthcoming year rather than the approach being one of headlines over substance. This would enable stakeholders to make more informed comments on the plan itself in addition to aiding internal planning of resources within companies. We made similar comments in this regard last year on the 2007/2008 plan and we are disappointed that Ofcom has again adopted the same approach in the 2008/09 plan. We continue to believe that it would be to both Ofcom's and the industry's benefit to have more detail on what the deliverables of the plan are, and how and when these might be achieved.

Business Market

An important aspect of the plan for Cable&Wireless is Ofcom's implementation of the strategy of fixed telecoms. However a continuing theme underlying Ofcom's approach to the fixed line market is the need for Ofcom to give greater cognisance to the business market. We understand the importance of the consumer in underpinning Ofcom's statutory obligations, however we believe that a broader interpretation needs to be given to the concept of consumer to ensure that business users are better represented/considered when Ofcom carries out its duties.

In particular Ofcom needs to recognise that the business market has different requirements and drivers than exist in the consumer market. For example business users require better service levels and have higher capacity requirements. The ability to provide a uniform national offering across the whole of the UK is increasingly key to winning business. Accordingly access to consistent wholesale in-puts at competitive prices is vital for CPs to continue to compete in this important market. Moreover sustained service competition and innovation in the business market is essential to the continued success of UKplc. As such it is vital that Ofcom gives more focus to the implications of regulation to this sector and CPs ability to provide the services required.

Finance/ Budget

We think it is commendable that Ofcom is seeking to reduce its budget further this year as it has done every year since its inception. However we are concerned that reductions in budget should not be achieved by Ofcom stepping back from its responsibilities. As Ofcom continues to pursue the goal of reducing ex-ante regulation where appropriate and instead moves towards an environment based on competition law this will require appropriate levels of resource to support complaints and investigations that will inevitably arise. Similarly as markets become more and more complex it is conceivable that Ofcom will face increasing numbers of Competition Appeal Tribunal cases as CPs challenge the correctness or not of Ofcom decisions. There is a risk that this will take existing resource away from Ofcom's work plans. In our view Ofcom needs to carefully review its budget to ensure that it can effectively deal with competition issues, market reviews and disputes in a timely and adequate manner. This is essential in fast moving markets where delay in addressing these issues could lead to market exclusion. Ofcom has not to date effectively demonstrated that it can handle competition law cases in line with the timescales set out in guidelines, and has also been late carrying out a number of market reviews. In our view it is essential that Ofcom addresses these issues going forward to ensure that it has adequate resources to effectively handle these complex matters.

CONSULTATION QUESTIONS

1. What are your views on the continued relevance of Ofcom's three-year strategic framework for its work in 2008/09?

We broadly agree that the three year strategic framework remains relevant. However as stated above the plan lacks detail of actual deliverables and their timescales and where necessary key individuals who can be contacted within Ofcom who are responsible for working on particular areas. This renders the plan vague and lacking in accountability.

2. What are your views on Ofcom's proposed policy work programme and top priority areas for 2008/09?

Cable&Wireless broadly agrees with Ofcom's top priority areas for 2008/9. Our comments below focus on Ofcom's approach to the implementation of the fixed telecoms sector.

BT's implementation of the Undertakings

BT's compliance with the Undertakings is essential to ensuring competition in the fixed telecoms sector and Ofcom's continued commitment to monitor this is welcome. The recent proposals for SLGs to improve standards of service delivery have been an important and welcome development. Prompt implementation of these SLGs now needs to be achieved.

Ofcom states that it plans to refine Openreach's financial framework to take account of recent changes in the market and to support the development of next generation services. However the timescales for carrying out the Financial Framework Review have already slipped and should not be allowed to slip further. Ofcom now needs to commit to carrying this out as soon as possible, in particular it needs to ensure that it remains robust in resisting any increases in LLU and WLR prices.

Promoting competition in broadband markets

Cable&Wireless is concerned that when considering any removal of ex-ante regulation Ofcom handles the process carefully to ensure that market conditions are sufficiently mature and that competition within the market is properly sustainable without the need for ex-ante regulatory obligations. An assessment of potential emerging competition is not sufficient in this respect. Rather Ofcom need to make sure that the market is developed enough in fact before removing ex-ante measures. This is particularly important given that in the past Ofcom's has taken too long to reach decisions in competition law cases.

As part of its work in promoting competition in broadband markets, it is essential that Ofcom ensure consistency and technical neutrality of regulation. For example ADSL is regulated on a reasonable charges basis whereas SDSL is regulated on cost orientation and potentially will be charge controlled. Ironically SDSL will not be replaced in 21CN whereas ADSL will.

Promoting competition in Leased line markets

We welcome Ofcom's recent publication of the Business Connectivity Market Review – this is an important piece of work in ensuring the promotion of competition in the leased lines market. However we are concerned that timescales for completing this market review are tight and this should not be allowed to compromise the quality of the work carried out. In addition we believe that Ofcom should also engage in the proactive enforcement of the BT's compliance of its current SMP obligations as we remain of the view that BT are not compliant in this regard.

Preparing for next generation core and access networks

Cable&Wireless is pleased with the approach that Ofcom has taken to its work in preparation for the next generation core and access network. Ofcom has been really helpful in getting together interested parties to move forward with technical design and helping Openreach in developing its consultation / liaison with industry processes (which was rather inexperienced at the start). We want Ofcom to remain engaged as the product launch progresses in particular to ensure that all CP's requirements are properly considered and factored into the roadmap.

2. Are there new or additional areas in which Ofcom should consider reducing regulation and work to minimize administrative burdens? Please provide specific examples.

Cable&Wireless generally supports moves to minimize administrative burdens and to reduce regulation where market conditions are correct for this approach. However we believe that it is essential that Ofcom commits to always carrying out an impact assessment when proposing removing ex-ante regulation to ensure that the timing and market conditions are appropriate for such measures. This is particularly important in fast moving markets where removing regulatory obligations prematurely could lead to market failure. This is particularly a concern as stated above, if Ofcom does not have the resources available to it to carry out competition investigations in a timely manner. As such any impact assessment could also include ensuring that sufficient resources are in place to deal with any potential competition issues that may arise as a result of a removal of ex-ante regulatory obligations.

3. Are there additional areas of international policy development that Ofcom should be contributing to? Please provide specific examples.

We support Ofcom's keen engagement in the EU Framework review and its role with the ERG.