

CMA Response to [Ofcom consultation on Draft Annual Plan 2007](#)

[CMA](#) is an association of ICT Professionals from the enterprise community in both private and public sectors. It is a registered Charity almost 50 years old, totally independent and without supplier bias. It is run by the members, for the members and aims to Influence regulation and legislation, provide education and training and disseminate knowledge and information for the public good. CMA's contribution to public consultations is generated via the process described in a footnote to this document.

Business Impact Statement

This consultation is important to enterprises of all sizes and in all sectors because it sets out Ofcom's regulatory concepts and intentions for the next year or so. However, the draft plan hints at only one project that could apply exclusively to the needs of business customers, (para 6.5 – Gateways) and there is no acknowledgement that such needs differ from those of the citizen consumer, nor is there even any recognition of their existence. The omission is 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 does not reflect such assurances. In fact, it is explicitly aimed at the domestic consumer and the citizen. CMA's response hopes to obtain some redress.

Summary

We appreciate the way the consultation lays out, with admirable clarity, Ofcom's thinking behind its policy and the way that its annual plan follows logically. However, the plan is focussed exclusively on the "citizen-consumer" and thereby ignores the needs and concerns of more than half of the industry's customer base. This is not the first time we have felt obliged to comment on this distortion and we do so again with increased emphasis and not a little acerbity. In short, we cannot accept the plan in its present draft form.

We have attempted to provide practical illustrations where we believe the interests of the enterprise user differ from those of the citizen-consumer and how promotion of the former will benefit the latter.

Throughout this response the term "enterprise" is intended to include businesses of all sizes and in all sectors both public and private, other than the suppliers of communications goods and services,.

A View from the Supply Side

A director of a major supplier has asked CMA:

"Given limited resources at both Ofcom and CMA this may be difficult, but do you think the lack of reference to business needs in this Ofcom document is helpful, and worth correcting through an Ofcom consultation response by 20/02/07?"

"I know the excuse may also be that business can look after itself, but Ofcom do have more explicit duties associated with UK competitiveness, innovation, sustainable investment , quality/ capability improvements, and meeting a broad

range of customer needs , which somehow do not come across strongly ...it appears to be very consumer oriented.”

Three Years Ago

CMA’s response to Ofcom’s consultation on its draft plan for 2004/05 made the key point that the plan was aimed exclusively at the consumer. The business user, on the other hand, was comprehensively ignored. We said: “Business users tend to be at the forefront of development and innovation, and provide the core revenue streams for competitive carriers to BT upon which competition itself is founded.”

Subsequently, Ofcom’s Chairman and Chief Executive both publicly proclaimed that Ofcom recognises the term “consumer” to include the business user. It is therefore disappointing and disturbing that, nearly three years on, the 2007 plan uses the term “consumer” in ways that make it obvious that this is no longer the case.

The closest the draft comes to recognising that there is a clear gap between the two major customer communities is the acknowledgement on page 4: “consumers display different attitudes to services, and use them in different ways”. But it cannot be claimed that the plan implicitly recognises the specific needs of enterprise customers when it contains over 80 explicit references to “consumer” or “citizen-consumer” but not one mention of the business user community.

The Enterprise Consumer

The needs of the enterprise consumer can be short-term, but those short-term benefits invariably translate into longer-term benefits for the wider community. By not specifically considering the needs of enterprise Ofcom is failing the citizen-consumer as well. Wealth is created by enterprises. The better the communications infrastructure and the better the environment for business development in the digital age, the more wealth will be created. The citizen-consumer will benefit both directly through better and more targeted services and products as well as through a stronger UK plc. Such a Public Outcome should feature strongly in the annual plan – regrettably, it does not.

Some examples of where this trickle-down effect, from enterprise to citizen-consumer, should apply are:

- Overall satisfaction with vendors from the 2006 CMA survey remains poor – 2.8 average for the fixed vendors and 2.95 for the mobile – where 3.0 is “less than satisfied”. After 22 years of competition it is clear that overall levels of service still leave much to be desired:
 - Fixed line service - It seems clear that BT is still putting cost containment above improving customer service, however much they may protest to the contrary. SMEs in particular feel dissatisfied with BT’s service levels. The competition, such as C&W, only wants big, profitable customers. For the SME outside the biggest cities we seem to be moving back to the duopoly of 1984 and for these reasons we welcome the promotion of competition and innovation as a continuing Ofcom priority.
 - Mobile service - Ofcom has declared the sector to be competitive – a view that is not shared by any business user we are aware of. CMA is uneasy about what often seems to be a too-close relationship between Ofcom and the operators. Ofcom could, for example, facilitate real and effective competition in mobile communications by seeking greater transparency in the cost of provision vs the price of services. It could also initiate a

debate on how best to improve coverage – through national roaming, through determined enforcement of the 3G licence conditions, through the imposition of a mobile USO, or through some form of hybrid approach.

- In the same survey, around half of the enterprise respondents said they were unable to access broadband where they want it. This is not only at variance with the accepted wisdom that 99.8% of the population now have access to broadband, it also poses a significant challenge to government and regulator in pursuing the PM's post-Lisbon goal of making the UK the leading e-country in Europe. The Dutch, the Germans and the French are all implementing plans for fibre to the home/business or kerb as the way forward for the next big leap in bandwidth – however, we in the UK seem inexplicably bent on a course of self-delusion and self-denial. It is therefore doubly welcome to note recent comments by Ofcom's CEO on universal access. We need far less focus on universal service and far more on universal access to “big” broadband, provided sooner rather than later. Achievement of this would finally break the so-called “chicken and egg” dilemma of service-before-bandwidth-before-service; it would also avoid the UK hitting a digital divide.

Some indirect examples, where benefits to the enterprise are more likely to manifest themselves in increased competitiveness than in immediate trickle-down, are:

- Internationals look to the NRA to push for seamless connectivity and services throughout the EU as a means to productivity and economic growth through regional processes which benefit all.
- Until last year the dominant supplier was unable to offer bundled regulated and unregulated services to its business customers. This has now been resolved to the satisfaction of both sides. However, it is incumbent on Ofcom to protect the enterprise user from the anti-competitive application of bundled services that could result, for example, in customer lock-in.
- Many business users have used and are still deploying multi-user GSM Gateways. However, legal uncertainty still shrouds their use and Ofcom is doing no service to the enterprise customer – especially SMEs who do not have in-house expertise - by continually delaying formal legalisation in a technology-neutral way.

A Public Outcome - Unfulfilled

We have commented (above) on the challenges posed by the Lisbon Agenda. The DTI's [National Broadband Strategy](#) of 2004 - the most recent - set a government target for 2005:

“The government target is to have the most competitive and extensive broadband network in the G7 by 2005. The target may therefore be broken down into the two factors – competitiveness and extensiveness – which combine to provide the overall market environment for Broadband. One can define these two factors in terms of the relevant dashboard indicators as follows:

competitiveness is defined as a composite measure of the market regulation index (a leading indicator), market choice, and price (a lagging indicator) – these are weighted: regulation (1), choice (3) and price (3)

extensiveness is defined as a composite measure of market context and Broadband availability – these are weighted market context (1) and availability (2).

In the context of the “public outcome” embedded in these definitions, (one which is central to the interests of UK enterprises) Ofcom has a clear responsibility to include, in the final version of its Annual Plan for 2007, measures to help achieve the government target. Yet the draft shows few signs of this. Perhaps the nearest, albeit still obscure, reference to national objectives and the national business interest is at para 4.37:

“.....investment in the UK in next generation access networks is currently lagging behind our major competitors.”

Such references are thin on the ground, however. The remainder of the draft plan is tilted heavily towards society and the citizen-consumer. For example: under the heading at para 5.5 “Delivering Public Outcomes.....” we have:

“We will also promote access to the communications services needed to participate in society, recognising that Ofcom’s role will often be to engage with the Government rather than pursuing solutions directly.”

A Suggested Amendment

Apart from the Foreword, the place for acknowledging the existence of the business user as a major marketplace participant is probably in the area of paras 3.9 to 3.11, which at present are wholly orientated towards the citizen and the individual consumer. CMA’s suggests amendments are (in red italics):

“3.9 No change

“3.10 Sometimes, the interests of citizens may be at odds with the interests of consumers, *both individual and enterprise. In turn, the interests of enterprise consumers may be out of step with those of individual consumers.* For example, promoting the availability throughout the UK of higher-speed broadband might involve going beyond what the market would deliver. Such public intervention could be viewed as being in the interests of all citizens in that it would promote a more inclusive, interconnected society. It would also benefit individual consumers who would not otherwise be able to receive higher-speed broadband, such as those living in remote parts of the UK. *However, the interests of enterprise consumers go even further, in that they would benefit from higher-speed, symmetrical broadband, delivered sooner, in all corners of the UK in order to deliver their own content to their customers, to join up otherwise dissociated elements of their supply chains and to improve their international competitiveness to the benefit of UKplc.* As consumers, some of us might have to pay more for services that would have been available to us anyway, but we would all benefit, citizens, individual consumers, and business users, from a society which enjoys more widespread access.

“3.11 In making policy decisions, it is important that we identify *the concerns and interests of all types of consumer.* We can then understand and make clear the trade-offs which our decisions often involve. This will be especially important as we respond to converging, and increasingly competitive, markets. For example, not all new services will be made available to everyone, meaning that the impact of convergence could be uneven. *It is especially important that we understand how such inequalities could impact the ability of our business community to compete internationally, and hence our national prosperity. We will therefore work* with government to determine which services society believes should be accessible more widely, bearing in mind that this may mean some consumers, *both individual and enterprise,* have to pay more for those services than might otherwise have been the case.

These proposed revisions inevitably draw attention to the omission, in the Communications Act, of any duty placed on the NRA to protect the enterprise user. It is assumed that the legislators believed that businesses can look after themselves and need no such protection. This is far from the case, as the example of BT's (previously uncompetitive) bundling of regulated and unregulated services illustrates. In the context of "public outcome" the UK enterprise, especially in the SME sector, deserves full support from the NRA if it is to make optimum use of opportunities presented by communications suppliers and contribute to the improvement of our international competitiveness.

Future Legislation

Para 2.10 of the draft states: "...we plan to review our experience of applying the Communications Act to inform a longer-term debate about future legislation." CMA finds it hard to believe that Ofcom will propose legislation that makes its task more onerous than it already is, but we entertain what ought not to be a vain hope that Ofcom will propose and encourage legislation that amends the anomalous definition of the citizen-consumer and identifies:

- The importance of the enterprise consumer to the country's international competitiveness;
- The need to encourage innovation in the use of advanced services by enterprises;
- The need to pursue world-class quality, security and service assurance at the network level in order to make the use of modern enterprise communications trustworthy and resilient;
- The right of the enterprise consumer to support from the NRA.

We also seek specific assurances from Ofcom that any outsourcing to self- or co-regulatory bodies of its current responsibilities will contain specific safeguards aimed at protecting the interests of the enterprise consumer.

Specific Consultation Questions (Annex 4 of the Consultation)

- 1 **CMA's views on Ofcom's proposed three-year strategic policy framework are expressed above**
- 2 CMA's views on Ofcom's proposed priorities for 2007/8 are as follows:
 - a. The work which Ofcom should do in 2007/8 to drive a market-based approach to spectrum. **The number of enterprise users having a direct interest in acquiring rights to spectrum is small. Our interest therefore centres on the impact of the still-to-emerge secondary market in improving end-user choice and price, especially where public outcomes are concerned. We note Ofcom's newly-stated policy on the distribution of the digital dividend and although we would have preferred to see some direct allocation of spectrum assets to BWA (in pursuit of a wider public outcome) we cannot sensibly argue with Ofcom's intended approach.**
 - b. The work which Ofcom should do in 2007/8 to develop new ways to deliver public outcomes as platforms and services converge. **CMA's views are expressed above.**
 - c. The work which Ofcom should do in 2007/8 to improve business compliance and empower consumers. **CMA's views are expressed above.**

d. The work which Ofcom should do in 2007/8 to promote competition and innovation in converging markets.

- **CMA would prefer to see a more robust approach by the regulator, within the plans summarised at paras 6.5 and 6.6, to bringing down prices within the mobile sector. For example:**
 - **We would like to see either an major improvement in coverage by each of the big 5, or national roaming mandated in order to limit the growth of combined market power as convergence escalates,**
 - **We were dismayed at the UK's approach to Commissioner Reding's proposed restriction on international roaming charges.**
 - **We remain very concerned at Ofcom's ambivalent approach to the Gateway issue.**
- **CMA would like to see an updated national strategy for broadband based on a concept of universal access distinct from that of universal service. We would also like to see a funded implementation programme supporting that strategy.**
- **CMA would like to be assured that Ofcom will not impose full PATS obligations on all VoIP providers.**

3. Are there additional areas where Ofcom should reduce regulation and minimise administrative burdens? Please provide specific examples. **CMA has no further comment.**

Footnote - CMA's Internal Consultation Process on Regulatory Issues

Any consultation document (condoc) 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 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 user 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 condoc. Note: if the condoc has significant international import, the views of the international user community could be sought. This is done through the International Telecoms User Group (INTUG).

The draft response is sent to all 1000+ 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.

END