

DRAFT ANNUAL PLAN 2007/8 CONSULTATION RESPONSE

Cable&Wireless

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INTRODUCTION

Ofcom's draft annual plan ('the Plan') provides more of a strategic overview than the Annual Plans published in previous years. It is undoubtedly helpful to have visibility of Ofcom's longer term priorities. But the Plan focuses on the strategic agenda at the expense of the detailed deliverables planned for 2007/08. Without understanding these deliverables, we cannot provide input on Ofcom's planned work programme and it makes it harder to set priorities and allocate resources for the coming year. We think that Ofcom should provide more details of its programme of work against each of the priorities for 2007/8 ahead of finalising this year's Plan.

It is therefore difficult to comment on Ofcom's plan in any detail beyond an appraisal of the general themes and policy priorities. We think that the three year strategic policy framework identifies the right key areas of focus. Convergence is a reality and we agree that 'Ofcom has a *role* in influencing the speed of convergence and how widely the benefits are enjoyed' (emphasis added). But more important than the speed of convergence is the need to improve service.

Service

With regard to Ofcom's continuing work to ensure that BT implements the Undertakings arising from the Strategic Review, it is evident that equivalence alone will not deliver sufficient benefits to customers. Service improvements are also critical if convergence is to deliver meaningful longer term benefits. We welcome the inclusion of creating a long term financial framework for Openreach to 'deliver efficiency, coverage and high quality services'. But we think that service improvement is one of the biggest challenges for the next two years and including it as a single bullet in the programme of work on the Undertakings does not give it the emphasis that it requires. As well as a longer term programme of work on service via the charge setting process, we would also expect to see some more immediate short term tactical outcomes that create incentives for improved service performance by BT.

'Consumers'

Ofcom's draft annual plan is focussed on consumers. Although Ofcom has clarified elsewhere that the definition may include both residential and business consumers, the overall thrust of the document does not demonstrate that sufficient attention is being devoted to business users of telecoms service.

It is important to draw this distinction because it will not always make sense to treat the two groups collectively. The requirements and priorities of business customers are often very different from those of residential consumers. For example businesses will generally demand better service levels and be prepared to pay more for those service levels. There must be a risk that priorities are not correctly identified when the two groups are treated as one.

Promoting competition

Ofcom needs to align its approach to promoting competition and, where it can demonstrate that it is appropriate, removing the need for formal regulation. This requires comprehensive and transparent impact assessments of both the risks and benefits of removing regulation. But it also requires an effective enforcement regime which can take more rapid action than we have seen to date. We appreciate that enforcement of competition law and SMP conditions can raise complex issues, but Ofcom is taking too long to make decisions. We would urge Ofcom to review its internal procedures to determine how it can make competition (as well as consumer) enforcement more effective and efficient.

Financing and objectives

With regard to Ofcom's financing, it is encouraging to read about efficiency savings. However, we would also like more transparency around the *effectiveness* of Ofcom's spending against its different strategic and policy priorities. For example we have a specific concern about the slow progress of competition act cases and question whether Ofcom is really dedicating adequate resource to these cases. As part of Ofcom's commitment to providing stakeholders with value for money, we think that Ofcom should provide objective measures of its activity and output in delivering the annual plan.

Ofcom's work is important to us, as it is to every player in our market. It is an unfortunate fact that a large part of Ofcom's work is routinely delayed. This makes it very difficult to plan resource and to forecast in any meaningful way, for example when the outcome of a market review may have an impact on forward looking prices. It also has a negative impact on colleagues' and customers' perceptions of Ofcom when timescales slip. We would encourage Ofcom to commit to realistic and achievable timescales – and stick to them. This level of detail should be included in the Plan.

Overall, we rely on the Annual Plan to hold Ofcom to account. As stated above, the current draft doesn't allow us to do this. As a result there is less incentive on Ofcom to avoid delays on particular proceedings. We would suggest one way to improve transparency and accountability would be to publish the objectives of Ofcom's senior management. If for example we know how the performance of the Chief Executive and other Executive Board members will be assessed, it will be easier to judge the success of Ofcom in a given year.

As a general principle, Ofcom should consider and implement methods of monitoring and measuring its own progress in delivering the priorities outlined in the Plan especially where, during the course of the year there may be significant slippage on key activities

We have answered the consultation questions where we have specific additional points to those raised above.

1. CONSULTATION QUESTIONS

1. What are your views on Ofcom's proposed three-year strategic policy framework?

We do not have any additional points to raise beyond the views expressed in the Introduction. To reiterate, our main concern is that Ofcom publishes a detailed plan for 2007/08 and sticks to it.

2. What are your views on Ofcom's proposed priorities for 2007/8? In particular:

- a. What are your views on the work which Ofcom should do in 2007/8 to drive a market-based approach to spectrum?

Cable&Wireless supports Ofcom's market-based approach to the management of radio spectrum. This approach will deliver better outcomes for competition and service innovation than the 'command and control' model.

- b. What are your views on the work which Ofcom should do in 2007/8 to develop new ways to deliver public outcomes as platforms and services converge?

Ofcom should resist pre-judging the outcomes of convergence and commit to work within the remit of its role: i) to intervene effectively to correct market failure and ii) to lay the foundations to enable converged services to develop by ensuring a level playing field. There is a risk that Ofcom will influence the market by pre-empting how and which public outcomes should be delivered.

- c. What are your views on the work which Ofcom should do in 2007/8 to improve business compliance and empower consumers?

We recognise and understand Ofcom's prioritisation of compliance in its programme for 2007/8. Our view is that the majority of companies want to comply with regulatory requirements and Ofcom needs to make it as easy as possible for them to do so. Whilst compliance is not optional, the reality is that some aspects of compliance – if overlooked – will have a more significant and detrimental impact on consumers. Simplifying the rules – and the language - and making it clear what we need to do and what others need to do must be the focus of the review of General Conditions. Ofcom might consider providing clearer indicators that will enable companies to more readily assess the risk to consumers. For example, Ofcom's guidance on the General Conditions identifies which GCs are relevant to different types of providers; extending this approach to clearly identify the risk to consumers and businesses would allow a more targeted approach to compliance with the GCs. It would also be helpful if Ofcom could provide clearer guidance where guidelines, regulation and legislation overlap; the treatment of CLIs is one example.

As a point of principle arising from the NTS review and the subsequent transfer of 0871 to ICSTIS' remit, from a business planning perspective companies need to be informed of the changes to regulation as soon as possible. There is a risk that the continuing lack of clarity around the compliance requirements to be attached to 0871, will outweigh the market opportunities presented by this number range. Similarly the lack of clarity on '03' and the lack of a compelling case for introducing this number range, confounds the problem.

- d. What are your views on the work which Ofcom should do in 2007/8 to promote competition and innovation in converging markets?

As Ofcom has identified, ensuring that BT Group plc implements its Undertakings effectively is an important focus but as we said in the introduction, equivalent access to wholesale products alone will not achieve an adequate outcome. The work on establishing a financial framework to incentivise the delivery of high quality services is critical and we hope to see this prioritised in the more detailed programme of work.

3. Are there additional areas where Ofcom should reduce regulation and minimise administrative burdens? Please provide specific examples.

As mentioned previously, in answer to the question on business compliance and consumer empowerment, regulation needs to be *targeted* and *specific*. The existing Topcomm scheme is an example of disproportionate regulation applied across industry without clear evidence of consumer and business benefit. Specifically, it is a scheme which relates only to voice and is most applicable for companies providing services to the residential and SME markets. The current cost of complying with the Topcomm scheme versus the perceived benefit (which can only be measured from website hits) is disproportionate and should be strategically reviewed from a cost benefit perspective rather than on the basis that more information must necessarily mean better informed consumers – it doesn't. Again the review

of the General Conditions is an appropriate opportunity to differentiate between regulation that is more appropriate to companies delivering to consumers and those delivering to businesses.