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19 February 2007

Dear Alistair

**Ofcom Draft Annual Plan 2007/8**

THUS is pleased to respond to Ofcom's consultation on its draft annual plan 2007/8.

Before responding to the specific questions posed in the consultation document, we would like to raise a general concern about the extent to which Ofcom recognises the specific needs and issues of business telecoms as opposed to residential. UK Business telecoms revenues amounted to £13.3 billion in 2005, some 35% of total retail revenues<sup>1</sup>, and with a disproportionate impact on UK plc competitiveness. Issues such as service performance can be critical for business users but may be overlooked where regulation focuses on business and consumer markets in aggregate. While we appreciate the importance of protecting consumers, and stimulating competition in provision of consumer services, the regulator should not lose sight of the distinct nature of the business market and the needs and interests of business customers.

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

We believe the five key areas of focus provide a sensible means of structuring Ofcom's overall work plan. We would encourage Ofcom to put particular emphasis on promoting competition and innovation in converging markets.

*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?*

No comment.

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<sup>1</sup> The Communications Market 2006, Ofcom, figures 3.42 and 31.3.

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*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?*

No comment.

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

We agree with the areas of work detailed in the draft plan. However, under the heading of 'making enforcement more targeted and effective', we would like to see specific reference to improving the effectiveness of Competition Act enforcement. A number of key Competition Act investigations (notably BT's residential broadband pricing and BT's charges for NTS call termination) have now been running for a number of years, leading to a loss of confidence in the Competition Act as an effective and timely source of protection against abusive behaviour. We would encourage Ofcom to include within its workplan a review of how it conducts C Act investigations and what measures could be taken to ensure speedier conclusion.

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

We have a number of detailed comments on the proposed work plan:

- We welcome the emphasis on ensuring that BT implements its undertakings effectively (page 28). We believe it would also be appropriate for Ofcom to review the effectiveness of the undertakings themselves, and consider where it might be appropriate for Ofcom to seek modifications or amendments.
- The plan makes reference (page 28) to "ensuring that, in respect of its 21st Century Network, BT delivers equivalence of input for operators using bitstream access to supply broadband services". We believe it is just as important for Ofcom to ensure that BT delivers equivalence of input with respect to call origination and termination on its 21st Century Network.
- We believe Ofcom should initiate a specific workstream to investigate possible regulatory approaches to improving the service performance of BT's regulated wholesale products. BT's record in hitting agreed service levels for provisioning and fault repair is consistently poor for certain products, and for other products it has deteriorated sharply following the creation of Openreach. Current incentives (eg SLGs) bear no relation to the costs imposed on CPs and their enterprise customers by BT's poor performance, and there is a strong case for Ofcom to take a more holistic view of product pricing and performance, perhaps introducing incentives to improve performance as part of a charge control regime. The draft plan makes reference to "creating a long-term financial framework for Openreach to deliver efficiency, coverage and high quality services", which appears to reflect this need. However, we believe the scope should include SMP products provided by BTW as well as Openreach.

- We welcome the emphasis on securing competition and efficient investment in next generation networks. The proposed work on modifications to the regulatory regime (new market definitions, new wholesale product specifications and appropriate pricing) is particularly important to provide the necessary certainty to underpin investment in next generation networks and interconnection.
- In its recent determination of a dispute over PPC payment terms, Ofcom declined to make any adjustment to the regulated charges for PPCs because “Ofcom is of the view that the exercise of aligning nominal prices and payment terms is best done within the framework of the next charge control for the relevant products and services when a thorough analysis can be based on an up-to-date pricing model.” There are a number of areas in which BT is potentially over-recovering on PPCs, and we are disappointed that there is no mention in the work plan of starting work on the next charge control review, which is due to come into effect in October 2008.

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

ICSTIS is currently consulting on the regulation to be applied to 0871 numbers. We are concerned that the original vision of an ‘ICSTIS-lite’ regime may have been lost, and could impose disproportionate administrative burdens on users of these numbers. We would encourage Ofcom to monitor this situation carefully.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Domhnall Dods'.

**Domhnall Dods**  
Head of Regulatory Affairs