

Claudio Pollack  
Floor 6, Office of Communications  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Head Office  
Inveralmond House  
200 Dunkeld Road  
Perth  
PH1 3AQ

Our Reference:  
Your Reference:

Telephone: 01738 456400  
Facsimile: 01738 456415  
Email:

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Dear Claudio

### **Review of Ofcom's Consumer Policy**

We welcome the opportunity to provide comments on the above consultation. As you may know, SSE is an energy company but also offers telephony services to its base of energy customers through reselling arrangements. We are therefore very interested in the development of competitive market arrangements for telephony services and the link between this and consumer policy.

We agree with Ofcom's central premise, set out at paragraph 3.15, that consumer interests are in general best served by promoting effective competition in the provision of communications services. In our view, citizenship interests – as distinguished by Ofcom in the consultation paper – are also well served by effective competition. We support Ofcom's general approach to protecting and empowering consumers, as set out in the consultation document, and particularly welcome Ofcom's stated intention not to impose an undue burden on service providers in the design of regulation.

We note Ofcom's intention to review the consumer-related General Conditions later in the year and suggest that it should be possible to develop a more focused regulatory approach for dealing with companies that persistently generate complaints. Such an approach would need to be supported by the availability to Ofcom of comprehensive complaint-handling data and we welcome Ofcom's intention to work more closely with the complaint handling organisations in this respect. We set out our thoughts in more detail in response to the consumer protection consultation questions. Together with our comments on other more detailed points, these are attached in the appendix to this letter.

*Scottish and Southern Energy plc*

I hope these comments are helpful.

Yours sincerely

Rob McDonald  
**Director of Regulation**

Consultation Questions

**General:**

*Q 1: Do you agree with the proposed distinction between citizen and consumer interests?*

It is useful for Ofcom to clarify the distinction between citizen and consumer interests as, used loosely, these concepts can often become confused. We agree that citizen and consumer interests raise different regulatory issues and that it is important for Ofcom to set out clearly the distinction between the two so that stakeholders can be clear where Ofcom policy is being driven by either or both of consumer or citizen-related considerations. The distinction that Ofcom has drawn at paragraph 3.14 of the document is appropriate, in our view, and reinforces the central interest of the consumer in the operation of markets. Citizen-related issues tend to factor in externalities to the unconstrained operation of the market such that broader social, economic or environmental considerations are taken into account by changing the market in some way. The focus of this consultation therefore, on consumer policy, will be on the effective operation of the markets for electronic communications services.

We would also note that the effective operation of competitive markets will, in our view, also benefit the citizen interest. For example, some aspects of the Universal Service Obligation such as low user tariffs could be offered on a wholesale rather than a retail basis by dominant service providers. This would allow competing service providers access to these tariffs rather than restricting their availability to customers of one retail service provider – BT Retail, at present.

*Q 2: Do you agree with Ofcom's position on vulnerable consumers?*

We agree with Ofcom's proposed position of having particular regard to the interests of vulnerable groups of customers when formulating policy, where there is evidence that they tend to be disadvantaged in a systematic way. However, we are not clear that those on low incomes are necessarily particularly "vulnerable" in relation to communications markets. In fact, this group of customers stands to benefit from the lower prices that a competitive market would bring, provided that they have ready access to information about competing product offerings. On the matter of obtaining information, it is relevant to note that Ofgem's review of the domestic competitive energy market in 2004 comments that "doorstep sales agents are the single largest provider of pricing information to customers"<sup>1</sup> and that "doorstep selling remains one of the most important ways of attracting new customers"<sup>2</sup>.

*Q 3: Do you agree with the proposed high level objectives for consumer policy?*

We support Ofcom's overall aim and objectives for consumer policy, with one suggested amendment to the overall aim: we suggest amending the second clause so that the overall aim reads as follows –

*To work together with other organisations and the industry to ensure that consumers benefit from increasingly competitive communications markets, are*

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<sup>1</sup> Domestic Competitive Market Review 78/04, Ofgem April 2004 – paragraph 2.59

<sup>2</sup> *ibid* - summary section

*effectively protected from physical and unfair financial harm, unreasonable annoyance and anxiety, and have the information and tools necessary to make informed choices.*

The reason for the proposal to qualify “financial harm” is that, in our view, consumers have to take some responsibility for the use made of the communications services available to them. For example, if a member of a household makes repeated calls to premium rate numbers this could, in aggregate, be said to cause some financial harm to the person responsible for paying the bills (the “consumer”) for the calls made. However, we do not believe it should be the aim of regulatory policy to protect the consumer in these cases.

*Q 4: Do you agree that the proposed indicators provide an appropriate basis for monitoring consumer interests? Are there any other indicators which should be used?*

In general, the proposed indicators set out in Annex 7 seem reasonable. However, for the table in A7.3, we suggest modifying the indicator on awareness of complaint procedures to measure the percentage against the population of customers who have actually wanted to make a complaint to their service provider. This measure is more useful, in our view, as it will track how easy it is for customers to find out about complaint procedures once they actually want that information.

*Q 5: Do you agree that Ofcom should publish an Annual Report on the Consumer Interest?*

We have no strong views on this.

### **Consumer Protection:**

*Q 6: Do you agree with the characteristics identified of effective consumer protection?*

We agree with the elements of an effective consumer protection regime that Ofcom has set out at paragraph 4.13. We particularly support Ofcom’s intention not to impose an undue burden on suppliers in the design of regulations. In our view, it is critical to the health of competition in the retail markets that compliant suppliers, who aim to act within the letter and spirit of prevailing regulation, are not over-burdened with prescriptive requirements aimed at consumer issues that have been caused by non-compliant suppliers.

We have been concerned about an increasing focus by Ofcom over the last year on extending General Condition 14 to require further codes of practice with prescribed contents in order to “solve” perceived market issues affecting consumers. We note that Ofcom intends to start a review of the General Conditions later in the year and suggest below an approach that could be considered as part of that review, in relation to the consumer-related conditions.

It occurs to us that Ofcom could extend the mechanism set out in General Condition 21, whereby the specific requirements of the Condition are only “switched on” via a direction from Ofcom, to other consumer-related general conditions. We are aware that the mechanism has recently been used to apply the requirements of Condition 21 to a certain class of service provider. However, the mechanism could also perhaps be used in consumer-related policy, in order to require named companies to put in place appropriate

remedies. This requirement could be triggered by objective criteria such as a certain number of relevant complaints being received directly by Ofcom or the dispute resolution bodies.

This approach would require Ofcom to establish a process for identifying service providers who are generating complaints in conjunction with the ADR schemes, together with analysis by complaint type. Energywatch produce such an analysis for the energy market and it would appear possible to develop this in the communications market through use of the Reseller Identification (RID) Codes that service providers must use to access wholesale calls and line rental services. It also seems to be complementary to Ofcom's own intentions to develop processes with the complaint handling organisations as discussed in paragraph 4.62. The benefits of such an approach are that some elements of regulation could be targeted effectively at those organisations that had demonstrably caused significant customer dissatisfaction, without burdening all service providers with the costs entailed in complying with those elements.

It would also be appropriate for Ofcom to use information that is independently provided, via Openreach, the complaint handling organisations or its own contact centre in establishing which service providers are generating complaints. We do not believe it is appropriate for Ofcom to rely on figures that are supplied by any other part of BT, which continues to have significant market power in the retail market, to establish this information.

*Q 7: Do you agree with the assessment and priorities for rights and regulations?*

We support Ofcom's intentions to develop links with other organisations in order to more quickly identify consumer issues. It does appear from the comments in the consultation that Ofcom believes that there are ways in which it could streamline its own operations and external liaison such that the time taken to introduce remedies for perceived problems in the communications markets would be reduced. We suggest it would also be useful to Ofcom to establish regular dialogue with the associations of service providers such as the Fixed Service Providers Association. These organisations, building on their members' experiences in the market, are well placed to comment on developments that would improve or be detrimental to the consumer experience.

We also believe that there should be fast-track routes for bringing proven "offenders" to justice, in the interests of the market as a whole. In our view, this aim would be facilitated by Ofcom having a clear view of the identity of service providers in the market and any volume of complaints associated with each service provider. We have also suggested a mechanism, in answer to question 6 above, by which specific regulatory requirements could be imposed on such offenders within a relatively short timescale.

However, we would be concerned about a move to "fast-track" changes in the statutory and general regulatory framework affecting all service providers. The case for any such change needs to be robustly made; furthermore, the specific changes proposed need to be developed in consultation with the industry so that the changes can be solidly based and adequately assessed for the impact they will have on the market.

Overall, therefore, we support Ofcom's intention to reduce the time it takes to deal with new consumer protection issues, and to review the consumer-related General Conditions and operation of self- and co-regulation. In relation to the latter topic, we consider that the governance of any self- or co-regulatory arrangements is of paramount importance in establishing arrangements which are inclusive, effective and provide market participants with an appropriate voice in the development of the relevant part of the market framework.

*Q 8: Do you agree with the assessment and priorities regarding consumers' awareness?*  
Yes.

*Q 9: Do you agree with the assessment and priorities regarding complaints handling and redress?*

On Ofcom's intentions to encourage certain behaviour with respect to complaint handling, we suggest that this could be one of the areas where our proposals in answer to question 6 might apply. In other words, where Ofcom has evidence that a communications provider is not dealing with complaints in a satisfactory manner, then additional regulatory obligations might be brought to bear. Where there is no such evidence, we believe that Ofcom should not seek to impose specific obligations regarding complaint handling beyond those that already exist in the General Conditions.

*Q 10: Do you agree with the assessment and priorities regarding monitoring and enforcement?*

As discussed above, we support Ofcom's intentions to streamline processes and information exchange with other bodies on the nature of complaints and the companies that are causing them. However, we have some concerns with Ofcom's intention to set up a dedicated investigations team. It would be useful for Ofcom to clarify the objectives of this proposed team. We believe that this work should be tightly focussed on companies that are causing significant complaints rather than diffused over general compliance activity across the market.

**Consumer Empowerment:**

*Q 11: Do you agree with Ofcom's approach to the provision of consumer information?*

We agree with Ofcom's view that it does not have a primary role in the provision of information to consumers and also agree that some basic advice on Ofcom's website would probably be helpful. We are not convinced that a self-or co-regulatory initiative would be helpful in this area. However, we believe Ofcom could perhaps be more proactive in delivering the message that consumers should be able to see savings if they shop around. On this topic, it is also worth noting that BT's policy of encouraging customers to sign up with the telephone preference service will tend to reduce the pool of potential customers that competing service providers can access through telephone contact.

*Q 12: Do you agree with Ofcom's conclusion on consumer awareness of suppliers and services?*

Yes.

*Q 13: Which of the options on comparative price information, if any, do you favour? Are there other options Ofcom should consider?*

We believe that price comparison websites are valuable to users and that some form of regulatory endorsement provides confidence to consumers using those sites. We therefore consider that Ofcom should retain an accreditation approach to sites that meet its criteria for providing comparative information. There are several such sites comparing prices in the energy market. We recognise that comparisons in the communications market are more complex than in energy due to the different bundles of services that can be provided in the communications market. There therefore needs to be careful consideration given to the design of the assessment presented on the comparative website.

Of the options discussed in the consultation paper, we would not favour Ofcom withdrawing its “PASS” scheme or establishing closer links with a single provider. We believe the present scheme could continue, unless evidence suggests that it should be reviewed and updated as set out in option 3.

*Q 14: What is your opinion about the ideas for generating awareness of price comparison information?*

We do not believe that Ofcom should become directly involved in publishing price comparisons or annual reports on this topic. However, we believe Ofcom should still carry out frequent audits of the results that comparison sites are displaying. If sites are not displaying accurate information then this should attract swift regulatory action with appropriate publicity.

*Q 15: Do you agree with our proposed approach regarding the Quality of Service initiatives?*

We believe that the current quality of service parameters for fixed line telephony confuse measures associated with the technical quality of communications lines with those concerned with customer handling. Reselling service providers, who make up a large segment of the market, cannot control the technical quality of lines, whereas the customer handling processes are largely within their control. In our view, it would be appropriate to separate these elements such that organisations providing wholesale services over communications systems provide technical quality of service data, while the parameters reported for resellers are restricted to the customer handling experience within their control.

*Q 16: Do you agree with our proposed regarding switching processes?*

We believe that well-designed switching processes are a very important component of a healthy competitive market for utility products. We therefore welcome Ofcom’s separate consultation on this subject. In our view, the most helpful course of action for Ofcom to undertake in order to promote consumer empowerment and willingness to participate in the competitive market would be to take the following steps:

- Establish consumer-friendly switching processes in the market;
- Convey the message that savings can be obtained by shopping around;
- Support the market with basic information on the Ofcom website supplemented by accredited price comparison websites; and

- Remain vigilant on the growth of complaints or scams, taking appropriate action against any offenders.

We do not consider that Ofcom should be too concerned at this stage about “uninvolved” customers. There is still some way to go to establish unbiased market processes, as envisaged in the telecoms strategic review. Once these have been put in place, the spread of anecdotal evidence about the ease of “getting a better deal” through switching is very likely to filter through to the uninvolved customers to the extent that they wish to be active in this market place.