

Representing the Communication Services Industry



Ofcom draft annual plan 2012-13

FCS response

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1 Summary

FCS welcomes Ofcom's draft annual plan and how it is identifying outcomes associated with its work programme. Ofcom is tasked with a wide range of dissimilar activities at a time of resource constraints, but Ofcom's strength is as the economic regulator for the industry, and we encourage a greater role for self or co-regulation by industry, when implementing Ofcom's policies such as customer switching and revision of non geographic calls policy.

We ask for two new projects to be included in the plan: legally reliable guidance for the interpretation of the General Conditions and implementation of Ofcom's powers under the USD to block numbers associated with fraud or misuse.

We particularly welcome Ofcom's future looking spectrum policy work programme and anticipate that this will include the greater use of beauty contests, as opposed to auctions, for spectrum allocations to services of societal value, such as business radio and for the Critical National Infrastructure.

2 Introduction

The Federation of Communication Services, FCS, is the trade association for the communications services industry representing companies delivering services and products to business and individual consumers via spectrum, copper and fibre. A list of FCS members can be found in the members' directory on the website www.fcs.org.uk. Our members are regulated by Ofcom and we welcome the opportunity to respond to [Ofcom's draft annual plan for 2012-13](#) on the areas that directly affect FCS member companies.

The major issues of importance to FCS members, who are generally small businesses, are to ensure that for a healthy market there should be:

- A fair, competitive and open retail environment
- Access to infrastructure- fibre, copper and spectrum
- Regulation that will deliver the above

3 General comments

Ofcom's draft plan shows that Ofcom is now tasked with a very wide range of dissimilar activities at a time when Ofcom is subject to continued resource restraint but requires a broad skill set. It is clearly a challenge to cover for example media plurality, postal services, numbering, review of BT's Undertakings and spectrum licensing each of which requires specific skills.

FCS welcomes Ofcom's statement of its objectives and outcomes in figure 12 and encourages Ofcom to be more precise when the final plan is published. This might include a figure for the reduction in complaints as a proportion of the total customer base by 2015 for example.

It is clear that Ofcom must set out priorities, but as noted last year, it would be helpful for stakeholders to know about the areas that did not make the final cut, since industry and other stakeholders might be able to provide some helpful input in these areas as self regulatory projects for example. We offer some suggestions in this response.

It might also be helpful to set out in the plan how stakeholders can raise a new issue with the relevant Ofcom staff member.

One value for stakeholders arising from this consultation would be that Ofcom is able to cite where a consultation response has helped Ofcom to revise its proposals.

4 General Conditions

The General Conditions of Entitlement are of specific importance to FCS members as they set out the rules for participation in the market.

Changes to the GCEs resulting from UK implementation of the revised European Framework in May 2011 have resulted in some confusion for market players. Definitions continue to be unclear. We recommend that Ofcom publishes legally reliable guidance for the interpretation of the GCEs to enable all CPs, especially new entrants and smaller players, to clearly comply with the regulations and not inadvertently make a mistake that leads to an investigation. We would like to develop this area with Ofcom so that we can assist CPs and reseller in the market.

5 Ofcom's proposed priorities

We particularly welcome Ofcom's work on:

- ***Ease of customer switching.*** Ofcom clearly demonstrates in the section commencing at 2.12 that the process for switching communications services between customers- both individual consumers and business customers- requires reform, while ensuring that all suppliers, irrespective of size, are able to participate in the market. Any barriers to switching are not only an issue for customers but also for the health of the competitive market. This work is important and whilst we do not wish to see it further delayed, there are material issues in the wholesale regime for number portability that will continue to frustrate Ofcom's desired outcomes on Switching (especially in the business sector) unless there is some sort of intervention.
- ***The non geographic calls services review.*** This review is long and complex and Ofcom is moving in the right direction. We applaud the detailed analysis that the Ofcom team have undertaken and the clear explanations as to which paths are the most likely to achieve Ofcom's objectives. FCS is opposed to extending the remit of PhonePay Plus [PPP] to include other revenue share number ranges. FCS members have reported that when PPP started to manage the 0871 number range in 2009 the market for the number range plummeted. There is a distinct fear that passing any more number ranges to PPP will have the same effect and destroy these markets as well, to the detriment of the end user business customers [particularly SMEs] as well as the number providers that FCS represents. A code of practice linked to the General Condition and quite remote from the 09 PRS sector or association with PPP appears to be the way forward to ensure a healthy and trusted NGCS market. We would value clearer explanation of the intention behind the "*specific set of regulatory rules*" in section 5.12 of the consultation. Promotion of the disaggregation of NGC network and service charges to the general public will require considerably more effort than hitherto. We hope that this project is not derailed by competition disputes.
- ***Releasing 800 MHz and 2.6 GHz spectrum.*** In common with many other stakeholders FCS encourages Ofcom to maintain its timetable for release of this spectrum. However the focus of Ofcom's recent consultation [Second consultation on 4G mobile spectrum award: <http://stakeholders.ofcom.org.uk/consultations/award-800mhz-2.6ghz>] appears to be solely on the four incumbent operators. Other operators are keen to bid for the low power 2.6 GHz spectrum and they may also offer a lower cost option for delivering mobile not spots. Ofcom

appears to have dismissed methods of ensuring that customers can use the spectrum where they need it such as national roaming or wholesale access obligations, but we urge Ofcom to keep these under review

- **Engagement with BEREC.** We support Ofcom's active involvement in the work of BEREC to ensure consistent application of regulation across Member States. Greater transparency of Ofcom's inputs would be valuable for UK stakeholders. We applaud the work of Ofcom's International Forum as a helpful method of updating UK stakeholders on work in Europe and internationally.

Fraud

However we believe that there is a new work area for Ofcom to consider in the forthcoming year. That is to use the powers that came into force in May 2011 under Article 28(2) of the Universal Services Directive to have a mechanism to block access to numbers or services where this is justified by reasons of fraud or misuse. Increasingly FCS members report incidents of fraud, particularly associated with phone numbers in other parts of the European Union.

Comments on specific Ofcom projects

Following the sequence set out in the draft plan we would like to make the following points, referencing the paragraph numbers

1.6 Infrastructure

Ofcom refers to services "*delivered over a capable infrastructure*". The adjective "*capable*" does not appear to reflect the essential national utility nature of communications infrastructure for UK economic and social life. Surely Ofcom and Government must be seeking resilient and secure infrastructure as the highest priority, rather than a focus on competing infrastructure.

We recommend that, as well as publishing communication market reports, setting out the historical changes in the market, Ofcom also sets out a future view of the market mapped against the European Commission Digital Agenda, which is in the public domain

Delivery of fibre infrastructure appears to inevitably be dominated by Openreach, the functionally separate part of the BT Group, which is winning many local authority tenders. We believe that Ofcom should review its infrastructure policy to assess the impact of this trend and consider that infrastructure competition is no longer required and to propose how a single infrastructure provider should be regulated. Other infrastructure sectors of the economy could provide examples of the regulatory framework needed. At the same time Ofcom might like to review the Undertakings agreed in 2005.

2.12 Switching suppliers

We encourage Ofcom to report on switching suppliers by the business community as well as individual consumers.

3.8 Ofcom savings

Ofcom clearly intends to implement further savings following the internal Expenditure Review. We would recommend that there are no further reductions in the headcount of the Business Radio licensing, policy or spectrum engineering and enforcement sections which we observe are operating at full capacity.

4.4-4.7 Business connectivity and voice telephony markets

We welcome this important work programme and wish to become fully involved on behalf of our members. We encourage Ofcom to include the requirements of SME end user businesses and their small service providers and resellers in this review. We have a specific concern that with the lack of an Openreach WLR4 equivalent in the fibre environment there will be failure in this market and disgruntled SME customers, who have become reliant on the reliability and resilience of WLR voice calls.

4.9 Delivery of superfast broadband

Putting infrastructure in place is just half of the story. Delivery of services over the infrastructure is the real gain for the UK economy. As noted above there is no NGA voice offering from BT to CPs despite requests from CPs. In a recent survey of the reseller sector by FCS most respondents said that the decision by Openreach not to supply a voice product over NGA would have serious implications for their business. The survey showed that demand for traditional voice services is holding steady or increasing and many SME business customers are reluctant to move to voice over IP citing reliability and resilience concerns. Most resellers are sales and marketing companies with expertise in customer service. The level playing field achieved over the last decade, where resellers can compete with larger and vertically integrated players and deliver significant cost benefits and service improvements to customers, is now being eroded. Ofcom intervention is urgent to ensure broadband services are delivered, probably in advance of the completion of the proposed market review.

4.50 Mobile coverage

When setting out its advice to government on how to invest the £150 million for new mobile infrastructure in not-spots we encourage Ofcom to consider the help that other operators can offer and not only to focus on providing state aid to the 4 large mobile operators.

5.11-5.12 Non geographic calls

As noted above we support Ofcom's work in this area

5.13 BEREC

We support Ofcom's engagement with BEREC and as noted above greater transparency of Ofcom's inputs would be helpful for stakeholders.

5.30 Fixed links review

We welcome Ofcom's review and anticipate that this will lead to a review of other radio spectrum markets, such as Business Radio.

5.15 Future looking spectrum policy work programme

This is a new and welcome initiative and will necessarily include all spectrum uses and take account of the intentions of the government. This was expressed by Minister Ed Vaizey on 15 November

2011, who said of spectrum management, *“greater use of beauty contests in certain circumstances as opposed to auctions; are there ways in which spectrum trading can be increased; how might access to spectrum for smaller businesses be improved; and whether the interests of business users should be specifically identified. We are also looking closely at the balance between licensed and licence exempt spectrum and whether further economic growth could be stimulated through the availability of more unlicensed spectrum”*

5.32 international spectrum committees

We welcome the increased support for Ofcom participation internationally in spectrum committees and reiterate our offer to assist should this be of help.

7.2 Regulatory principles

Ofcom has set out its regulatory principles in this section. We suggest that Ofcom considers whether the light touch approach originally envisaged in the Communications Act 2003 is sustainable as communications services become the staple underlying support for the growth economy, and like the financial services industry, perhaps a review of regulatory principles is now required as an input to the current Communications Review.

7.12 Options for intervention

We encourage Ofcom to review the range of alternative solutions such as self or co-regulation, which could be a useful mechanism to implement Ofcom’s conclusions of the NGCS and Switching reviews.

7.39 Spectrum leasing

Ofcom appears to suggest that the expansion from Phase 1 to Phase 2 seems to be predicated on uptake. However Phases 1 and 2 are completely different as they operate on different market layers and we would recommend that Phase 2 is commenced as soon as possible to enable greater use of the spectrum as anticipated by the Framework direction.