

Representing the Communication Services Industry



Ofcom's Draft Annual Plan
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Introduction

The Federation of Communication Services, FCS, is the trade association for the UK communications services industry representing more than 300 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 this opportunity to respond to Ofcom's draft annual plan for 2013/14 and to comment 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
- Clear regulation that will deliver the above

Response to the Draft Ofcom Annual Plan 2013/14

Items missing from the draft plan

- a. No mention of a work-stream to examine the spectrum needs of the emergency services and the Critical National Infrastructure providers. The existence of a plan to have such a work-stream was publicly confirmed by Steve Unger of Ofcom at the Westminster e-Forum Seminar on spectrum (7th December).
- b. It is believed that, due to the timings of the potential changes in the Band Plan, the 2013/14 Ofcom Annual Plan should contain the necessary references. It cannot be left to future annual plans we believe.
- c. In order to garner opinion, Ofcom are going to have to undertake a meaningful dialogue with hundreds of individual CNI providers. FCS's CNI Business Radio Users Group stands ready to help facilitate this process.
- d. No mention of the need to set UK 999 services in readiness to cope with the new data/voice functionality required by e-Call, the pan-European automobile emergency call system which is mandated for inclusion in all new vehicles from 2014.
- e. No plans to regulate mobile phone operators' entry into the fixed line space. This is already creating new market distortions, as existing fixed line providers cannot compete on an equivalent footing in the mobile market.
- f. No specific plans or time-frame to regulate BT Group's fibre connectivity services in a similar manner to WLR3 for the copper network. Failure to act in a timely manner risks creating a new monopoly position in the fibre network.
- g. No commitment to provide legally reliable guidance on the General Conditions

Comments by Section (these comments are made in the order that the relevant items appear in the draft plan):

Section 1

1. 1.3: While noting the re-statement of the principal duties of Ofcom (as set out in the Communications Act,) i.e. to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, FCS strongly believes that these objectives are generally best achieved by promoting effective competition in these markets. Regulation imposing potentially intrusive consumer protection obligations on communication providers should always be a last resort.

In acting as a proxy for competition, the regulator has a duty to consider the effects of competition upon a variety of users, including – crucially in FCS's view – the business user in general and the SME business user in particular. Choosing to concentrate on consumers and citizens effectively precludes any regulatory stance which might address specific distortions peculiar to the business-to-business sector.

2. Figure 1, Secure optimal use of spectrum: we strongly support the use of specialised systems for the emergency Services and CNI Providers, all of whom expect to take advantage of globally harmonised mobile systems designed specifically for their purposes and based on world-wide LTE standards. The FCS therefore supports the release of 700MHz for harmonised mobile use providing it is understood that harmonised mobile use INCLUDES these professional systems also. If not, then the UK will need a plan to develop spectrum in other bands that can be used by emergency services and CNI providers. Work on this should need to be begun during the lifetime of this Annual Plan.
3. Figure 1, Opportunities to Participate: The ES / CNI Work Stream will presumably need input from sector members. The FCS would seek clarification on the level of participation that will be required
4. 1.9: Ensure effective competition in business connectivity and voice telephony markets: converged markets require converged thinking. The Mobile Network Operators are moving increasingly into the (regulated) fixed telephony space, but there is no equivalent route by which fixed telephony providers can move into the mobile space with price-comparable bundles of services. BT Group's copper connectivity services are highly regulated via WLR3, but there is no regulation whatever on their fibre connectivity services. Both of these shortcomings risk market distortions and the creation of new monopoly or complex-monopoly positions, to the detriment of the specialist reseller community. Neither is addressed in the draft work programme. Given the speed with which the market is developing, we argue that both require attention during the 2013-14 work period.
5. 1.19: Comments on questions see below

Section 2

6. FCS is keen to point out that the delivery of actual broadband using the 800MHz or 700MHz is very problematic (technically) due to propagation effects and the impact that has on spectrum re-use. We see that the 800MHz band will be useful for the delivery of low-speed

content (voice and some types of data services) over wide areas but will need to be accompanied by resources supported by higher frequency bands to deliver broadband content. This is especially relevant in the provision of services to not-spots (see also section 5)

Section 3

7. Figure 3: FCS feels it would be useful for Ofcom to clarify the diagram to show that providing radio spectrum for essential services such as is needed by the CNI providers and the emergency services is a fundamental part of furthering the interests of citizens.
8. 3.4: FCS is grateful for the confirmation that market mechanisms cannot address all aspects of spectrum management for the UK. If it did there would be no need for Ofcom. The FCS supports the use of a directed policy for the provision of spectrum for essential services. This includes a continuation of the current arrangements for business radio for all aspects of the sector's operations.
9. 3:15: Where local circumstances make it appropriate, the provision of access to BT's ducts and poles is to be welcomed, though the principle should be clearly extended to other communications operators' (and other utilities') infrastructure as required. FCS believes that Ofcom should also support local initiatives to lay new infrastructure on a co-operative or subscription basis by ensuring that interconnection to the local BT exchange is made available on an appropriate basis.

In general, however, FCS believes that effective retail competition is the most efficient means of delivering choice and quality for end-user customers - which means ensuring that wholesale services are available on an equivalent basis from BT on both its copper and fibre networks. Specifically, FCS is keen that Ofcom should ensure that voice services which are suitable for reseller CPs should be provided over BT's fibre network.

10. 3:18: Ofcom's commitment to promoting competition in the wholesale provision of mobile services is welcome. Though we contend the four national wholesale providers represent something closer to a complex monopoly situation than a truly competitive market. However, we are very concerned that MNOs are now entering the fixed line space, offering bundled service packages of both fixed and mobile products. This has the effect of distorting the market, as resellers in the fixed space do not have equivalent access to wholesale mobile services. This, in turn, threatens the vibrant and diversified resale market, and risks inhibiting future competition and innovation in this sector. FCS urges Ofcom to institute some urgent measures to create a greater equivalence of access to mobile functionality.
11. 3:19: FCS welcomes the commitment to ensuring equivalence of access to wholesale services delivered over BT's newer platforms. However, we are already seeing evidence to suggest that lack of regulation of these NGA products offers the possibility of distorting the market for high speed broadband over Openreach's fibre network. We urge this work is made a priority in 2013/14.
12. 3.30: Given Ofcom's strong preference for gaining-provider-led processes, FCS urges work be brought forward to make gaining-provider-led the norm in the mobile market.

- 13. 3.33:** Same point as 3.4
- 14. 3.33:** FCS is encouraged by the increased focus on international work. We particularly note the need to remain fully engaged in the European process. The FCS expects to see a need to undertake regulatory action to further the interests of citizens in the following major sectors in the coming years
- a. Emergency Services
 - b. Rail transport
 - c. Power arrangements
 - d. Aviation
 - e. Automatic notification of automobile accidents
- 15. 3.35:** FCS supports efforts made by DCMS to address the issues surrounding the availability of sites for radio masts - the MIP policy.
- 16. 3.35:** The EU has mandated that the e-Call system must be installed in all new vehicles sold within the EU as of 2014. This is an automatic call system which alerts the emergency services in the event of a vehicle having an accident, firstly sending a packet of data (vehicle registration, GPS position, number of occupants, which airbags deployed); secondly opening a voice channel by which emergency services can talk to the vehicle's occupants via the in-car audio system. As of September last year, the UK 999 call-handling centres operated by BT and Cable & Wireless were not equipped to receive this data/voice mixture, and had no immediate plans to do so. We urge Ofcom to make e-Call readiness an urgent requirement for the call-handling centres. And to require mobile network operators to guarantee calls generated by e-Call will be handled by their networks in an identical manner to conventional 999 calls.
- 17. 3.54:** FCS notes the relevance of this paragraph to the importance of ensuring that spectrum is available for the provision of essential services in furthering the interests of citizens.
- 18. 3.56:** As in 17 above, Broader social value must also include availability of spectrum to support of the delivery of essential services such as power, water, transport etc.
- 19. 3.59:** FCS believes that the most important role of the regulator is to act as a proxy for competition. Accepting that the regulator has a secondary role in undertaking specific actions and interventions in the citizen interest, that role should be confined strictly to the actions and interventions required by the failure of competition.

Section 4

- 20. 4.1:** FCS stresses the need for the spectrum for essential services to be considered a critical area of work for Ofcom. It forms one of the prime priorities.
- 21. 4.14:** FCS welcomes Ofcom's commitment to improving ease of switching and we support Ofcom's preference for a Gaining Provider-led process as best supporting competition and the customer experience. Number Porting is increasingly an integral component of customer switches and we would wish, therefore, to see some of the current shortcomings of the process and the ambiguities within General Condition 18 (which does not adequately reflect

current market realities) addressed and Number Porting specifically instanced as a central workstream within the ongoing switching project.

22. 4.25: FCS supports the work in progress on the 800MHz band.
23. 4.27: FCS supports the return of the 600MHz band to the broadcast providers. The change of the 700MHz band to harmonised mobile use is supported under the caveat that this usage category INCLUDES the use of the spectrum for essential services and other services of public interest as well as commercial mobile uses.
24. Figure 4: Needs to include the appropriate changes to reflect regulatory action to support the use of the 700MHz band for the provision of services of public interest (essential services).
25. 4.34: FCS appreciates and applauds the Government's commitment to market-leading broadband availability. But we caution that Openreach is rapidly becoming the monopoly fibre infrastructure provider in many areas of the country. To mitigate the risk of any abuse of BT Group's dominant position in these areas, Openreach's (currently unregulated) fibre products should be urgently subjected to an equivalence regime similar to that currently imposed on their copper network. Ofcom should also continue to monitor instances where developers appoint solus service providers in Greenfield developments leading to a form of "local SMP" which may damage competition.
26. 4.38: One specific area of 'consumer harm' missing from this draft is the physical harm caused by vehicle accidents. And the proven potential for modern communications to reduce that harm by communicating timely data to the emergency services. FCS supports the EU e-call initiative for vehicle safety, which is already saving lives in those Member States who undertook the initial trials. We urge Ofcom to require UK 999 services are fully equipped to handle these calls.
27. 4.39: FCS has reservations about the reform of non-geographic numbering and whether the cost unbundling approach favoured by Ofcom will lead to greater cost transparency and improved consumer confidence in these number ranges.
28. 4.43: Treating small companies with fewer than 10 employees as though they are consumers, enjoying the same contract rights as householders, is an anomaly which adds significant cost to the regulatory process and causes widespread confusion among small business owners. We argue this protection is no longer appropriate or proportionate for the needs of today's market, and should be removed. Until it is, FCS cautions against blanket restrictions on the nature and terms of contracts between CPs and their customers: tying providers to restricted contract terms prevents them offering creative solutions to help their customers' businesses grow by, for example, allowing for deferred capital repayments or flexible leasing arrangements over longer contract periods. These would be compromised if the customer enjoys the option to switch without penalty.

Section 5

29. Figure 5: FCS supports the Ofcom work on releasing spectrum providing due account is taken of the need to include the provision of spectrum for the essential services (services of public interest)

- 30.** Section 5.17 FCS is encouraged by the proposal to undertake a Forward-Looking Spectrum work Programme. In relation to this we recommend the FCS contribution to the Ofcom 5-year Spectrum Plan that was provided in 2012.¹
- 31.** 5.18: FCS notes the challenges that Ofcom might face when undertaking regulatory action (as opposed to market mechanisms) to ensure the interests of the citizen are catered for in the provision of essential services.
- 32.** 5.72: We welcome Ofcom's support for the Digital Radio Action Plan, and ask for some urgent recommendations on the date for a digital radio switch-over. Early notice will allow the industry the maximum time to plan ahead. This is particularly important for the automotive after-market, where the overwhelming majority of existing vehicles are not equipped with digital receivers.

Section 6

- 33.** 6.17 & 6.18: FCS is grateful for the work done in keeping the radio spectrum clear of interference. This is especially important in cases where the radio spectrum is used for the provision of essential services. We would encourage Ofcom to consider strengthening this activity still further.

Section 7

- 34.** 7.9: In view of the extreme difficulty of planning emergency services and the long lead time to implement the necessary changes and that the assignment process is unlikely to be based purely on market mechanisms, the FCS considers that an early start needs to be made on planning the use of the 700MHz band by essential service providers of a wide variety of types, not just the emergency services. We therefore propose that this work be commenced within the time scope of this Annual Plan.
- 35.** 7.10 & 7.11: FCS strongly supports this activity to identify how the challenges of increasing use of BR are met and also, the Strategic review of UHF1 7 2 for PMR services. It is anticipated that the increasing congestion in urban areas of recent years has made a review more important. We therefore propose that the Strategic Review be started within the time-scope of this Annual Plan.
- 36.** 7.16: The collection of 'micropayments' by means of premium-rate services is just part of a far greater whole. It is not clear there is any distinction in law between micropayments and any other type of payment made by a consumer to a merchant. To ensure consistency of consumer experience, and to avoid any distortions which might advantage one micropayment route over another, Ofcom should aim to pass all regulatory responsibility for micropayments to the Financial Services Authority (or its successor) at the earliest possible opportunity. Ofcom's role should be confined to ensuring appropriate allocations of PRS number ranges, encouraging the development of a healthy and competitive market for micropayments via PRS, and ensuring appropriate levels of enforcement and penalties are attached to the abuse of PRS.

¹ http://www.fcs.org.uk/my%20files/fcs_pdfs/member%20groups/business%20radio/12-08-01%20fcs_contribution_to_ofcom_5_year_spectrum_plan.pdf

Section 9

- 37. 9.8 et al:** FCS notes that the examination of the needs of the emergency services is relatively simple in that there are only a limited number of stakeholders to consult. However, the provision of essential services is achieved through a bewildering array of entities, each having very clear obligations placed on them. Furthermore, other professional entities provide services that are also essential and which further the interests of UK citizens. It is therefore suggested that the FCS can assist Ofcom in addressing these divergent groups to some extent. However, we caution that many of the services are covered by the strong need to maintain confidentiality. In these cases it may well be inappropriate for the FCS to participate in the sharing of actual information.