

Representing the Communication Services Industry



Ofcom's Annual Plan – 2014/15

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Contact for response:

Chris Pateman

Federation of Communication Services Ltd
Burnhill Business Centre,
Provident House,
Burrell Row,
Beckenham, Kent
BR3 1AT
Tel: 020 7186 5432
E-mail: fcs@fcs.org.uk
Web: www.fcs.org.uk

Introduction

The [Federation of Communication Services](#) is the UK trade association for the professional communication services sector. Our 400 members and associates deliver voice and data functionality and services to business and public sector users by means of copper, fibre and radio transmission infrastructures. Over 50% of FCS members provide services in the fixed markets and many of these are smaller CPs or new entrants. These FCS members deliver telephony services into both the residential and business markets, but most specialise in serving business customers, a sector which is continuing to grow. FCS also facilitates the FITAS competent persons scheme for individuals who install radio-frequency equipment into motor vehicles. This submission includes comments from members throughout FCS's broad spread of membership.

Overview

We welcome the opportunity of responding to this call for inputs to Ofcom's 2014 Action Plan. Ofcom has shown some impressive progress in the last 12 months in deepening its understanding of the need for business subscribers to access competitive and transparent communications systems in order to facilitate their corporate growth. However, we remain concerned at a lack of precision and consistency in defining the terms 'citizen' and 'consumer', as used in section 1.3 *et seq*, when it comes to the practical application of regulation. Business consumers of communications products are the vital backbone of the UK economy. It is a matter of national importance that the needs of business users are accorded a high priority in every aspect of every economic regulator's work.

To ensure the needs of business subscribers are fully captured, FCS recommends a specific risk-assessment of the impact upon business subscribers should be a requirement of the process for determining all new regulatory pronouncements. To take just two examples from the last 12 months, Ofcom's work on inadvertent roaming of mobile phone signals in border areas of Northern Ireland took no account of the impact on business customers whose CPs buy mobile minutes on a wholesale basis. The extensive consultation on non-geographic number charging left Ofcom unable to mandate that 08- numbers would be free of charge for business customers.

FCS appreciates that Ofcom's precise terms of reference are constrained by the Communications Act, and above that the European Framework. But we urge Ofcom to seek an urgent mechanism by which the impact of regulatory changes upon the vital Business sector can be anticipated at a much earlier stage in the process.

Comments on 2013/14 Ofcom Annual Plan Condoc

These comments are made in the order that they appear in the Condoc.

Missing from Condoc

- 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 2012).
- b. 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 placed on the EU market from 2015.
- c. 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.
- d. 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.

By Section

Section 1

1. 1.3: FCS fundamentally disagrees with the assertion that it is the role of Ofcom to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets. It is the role of the regulator to act as a proxy for competition. It is not the role of the regulator to act as a proxy for disaffected or vulnerable consumers. Consumer protection is the role of Parliament, where appropriate escalation and accountability mechanisms ensure high levels of public scrutiny and accountability.

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.

We accept that this definition of Ofcom's role is at least partly due to EU definitions of the role of the national regulator. But we would argue that as the communications market is different in every member state, a large measure of subsidiarity ought to subsist.

2. 1.9: Ofcom's work is informed by wider market developments, including the changing consumer use of communications services. Ofcom's work must clearly take account of the changing business use of communications services, too. The needs of business customers, and the manner in which solutions for business users may be bundled, may be profoundly different than those of consumers. Hence, the impact of regulatory intervention may have a profoundly different effect in the business market than in the consumer market.

3. 1.10: Widespread availability of superfast broadband. The figures for 95% availability of 'up to' 30Mbit/s broadband are skewed in favour of delivery to consumer addresses, and away from delivery to business addresses. They paint an artificially rosy picture of the extent to which high speed and reliable broadband is available to British businesses. See, for example: <http://br0kent3l3ph0n3.wordpress.com/2014/01/20/bts-broadband-roll-out-neglects-businesses-the-proof/>
4. 1.11: Develop and implement policies that will improve the ease of switching. Ofcom's commitment to gaining-provider-led switching in the Openreach copper network is welcome, but limited. The same processes must also be applied to fibre and mobile networks.
5. 1.11: Release of 2.3GHz and 3.4GHz spectrum bands. Spectrum is a scarce resource. FCS urges Ofcom to consider a more granular approach to this and all future spectrum auctions. Auctioning off small and discrete blocks is more likely to encourage competition, innovation and diversity in the use of spectrum than artificially skewing the market in favour of only the very largest players by insisting on a smaller number of much larger lots.
6. 1.11: Implement reform of non-geographic numbering. Price transparency is simply not on the table for business users, because Ofcom's purview precludes specific regulation of services to business subscribers.
7. 1.16: Promote effective competition and informed choice: FCS would be grateful for sight of Ofcom's guidance on consumer choice for the estimated 30,000 new home owners for whom their house builders have arranged and installed estate-wide solus calls and broadband solutions with BT's NGA division.
8. 1.16: Secure optimal use of spectrum. See above comment 5. In the light of the 800MHz experience, FCS is very concerned to ensure future definitions of what constitutes 'optimal' use of spectrum includes a clear measure of the societal benefits accruing from certain uses of spectrum, rather than simply a measure of what the largest commercial players might be willing to pay for it at auction. This subject is of crucial concern, given the interests of the emergency services and other critical national infrastructure users in the UHF bands and the forthcoming 700MHz release.
9. 1.16: Cost and Value. Ofcom's work in this area could usefully be extended to the cost/value propositions available to tenants on business parks where BT Openreach FTTC is available only to local consumers, and the cabinets serving the business areas are not fibre-enabled.

Section 2

10. 2.17: Inadvertent roaming to other nations' carriers is a growing problem. Ofcom's recent work on this subject in the Ulster/Eire border did not address the technical issues, but rather brokered a tariff agreement which prevented UK consumers from being charged Irish roaming tariffs. This leaves unresolved the issue of UK consumers in the Dover area of Kent finding themselves suddenly inadvertently roaming in France, thanks to high-powered signals from across the Channel. It also fails to provide a solution for business customers who may have bought wholesale mobile minutes via a specialist CP provider. FCS urges Ofcom to undertake further work on this issue.
11. 2.20: Availability of superfast broadband services to business customers lags significantly behind that to consumers. See, for example, <http://br0kent3l3ph0n3.wordpress.com/2014/01/20/bts-broadband-roll-out-neglects-businesses-the-proof/>
12. 2.21: DAB broadcasting roll-out is encouraging, and Ofcom are to be congratulated for their role in encouraging and monitoring the significant growth in availability over the last two years. FCS urges Ofcom to point to this work in encouraging government to make an early announcement of a switch-over deadline. This would not only help with planning the 'digital dividend' spectrum, but would give the industry confidence to encourage consumers to prepare for a non-analogue (or, rather, less analogue) future. This is particularly important for installers in the automotive after-market, where the vast majority of current vehicles are currently non-DAB enabled.
13. 2.41: Quality and reliability of service is of crucial importance to business customers, for whom upload (as distinct from download) speeds are far more important than they are to most consumers, especially if they are undertaking e-commerce relationships. Ofcom should strive to ensure a competitive market for access to the fibre networks. And that ISPs produce and publish service level data on a regular basis

Section 3

14. 3:7: FCS is concerned that a lack of competition in the copper network is being mirrored by a lack of competition in the fibre roll-out. We believe Ofcom can do more to encourage competition at the utility and sub-loop level. This is especially important for customers on business or industrial areas, who may wish to choose from a variety of broadband speeds/functionalities at a variety of appropriate price-points. Mandating what amounts to wholesale line rental on the BT fibre network, whilst welcome, does nothing to encourage the availability of higher performance or more tailored solutions beyond what BT choose to offer local consumers.
15. 3.12: FCS congratulates Ofcom on the progress which has been made to date in incentivising Openreach to improve quality of service. We regard this as a pivotal role of the

regulator, and encourage Ofcom to put the maximum resources into acting as a proxy for competition in this monopoly situation.

In this regard, we question whether Ofcom's currently proposed KPIs go anywhere near as far as they should. The guiding principle should be not what Openreach are currently accomplishing, but what, in a competitive market of two or three players, customers would regard as sufficiently slapdash a service to switch to an alternative provider. Ofcom's initial proposal allows Openreach three years to meet a minimum quality standard which Ofcom already acknowledges is below that which is expected by the market generally.

16. 3.14: FCS agrees with Ofcom's desire for informed choices and the ability to make decisions. As the market converges, we therefore urge that gaining-provider-led switching be made the norm across all technologies as a matter of urgency. This work should be undertaken now, in anticipation of the promised DCMS legislation to extend the principle to switching 'bundles' of services.
17. 3.19: Traffic management practices and the availability of uninterrupted service are of crucial importance to business customers. We acknowledge the work which has been done to create KFI, but question how that significantly improves consumer choice when so much of the service depends upon the upstream performance / management policies of what will often be a single incumbent fibre provider. FCS argues Ofcom should encourage far more competition at the utility / sub-loop level to enable resellers to genuinely differentiate themselves on quality of service.
18. 3.33: FCS very much supports GPL switching, and was pleased to see DCMS's commitment to support Ofcom's position by legislating in favour of GPL as a default across the board, including 'bundled' packages. In this context, the expression 'across the board' is clearly technology agnostic. FCS urges that there should be no delay in extending this vital principle from the Openreach copper network to all other technologies. We would particularly welcome an early indication of the deadlines by which mobile network operators will be required to comply.
19. 3.38: FCS congratulates Ofcom once again upon the remarkable achievement of securing and enabling the necessary spectrum and radio operations to ensure the smooth running of the London 2012 Olympics. We are pleased so many of the lessons learned at London 2012 have already been used to good effect in preparing for Glasgow 2014. This Commonwealth Games will be the first major UK event to insist as a condition of tender that all radio site installations and operations are undertaken to the FCS1331:2013 Engineering Code of Practice. We very much look forward to an early opportunity of sharing the learnings which arise from this procurement decision.
20. 3.42: Ofcom's consultative approach to the 2.3GHz and 3.4GHz bands is commendable. The best approach to future auctions to ensure spectrum is both efficiently allocated and capable of hosting innovative new uses is to consult widely and to auction proportionately. There should be no innate presumption that auctioning off large lots of consolidated

bandwidth will create either the optimal use or the optimal long-term benefit to HM Treasury.

21. 3.46 *et seq*: Ofcom is well aware of the tensions surrounding potential re-farming or re-planning of spectrum in the 700MHz bands. FCS plans to play a full role in helping inform Ofcom's consultations on the subject. For the record, we simply note here that at present there is no capability to deliver mission-critical voice over LTE in the event of a widespread and prolonged failure in the mains electricity supply. Until such a capability is a proven reality, Ofcom should be mindful in planning the 700MHz strategy of the over-riding public good which results from citizens and consumers being able to trust the emergency services to maintain order and protect lives at times of national emergency.
22. 3.58 *et seq*: In the context of the need for spectrum to support resilient mission-critical communications, emergency services have more in common with energy companies, railways and port operators than with mobile network operators. We urge Ofcom to consider constructive mechanisms by which spectrum sharing for emergency services users might be efficiently brokered with critical national infrastructure providers.
23. 3.71: It is not just consumers who use 03-, 05-, 070- etc numbers. Businesses call them too. But Ofcom's new pricing and protection regime does not cover business subscribers, nor is there any Ofcom guidance for network operators requiring or encouraging them to maintain the same charge bands for calls made from business numbers. This risks creating some significant new problems for resellers, who will have no redress against suppliers who choose to charge a premium. Especially as the usual commercial balancing mechanism – the ability to switch their customers' numbers to alternative suppliers – has effectively been blocked by Ofcom's 2013 guidance concerning GC18.
24. 3.85: FCS welcomes Ofcom's commitment to proportionate and workable implementation of the 'connected continent' proposals. We urge Ofcom to push for early implementation of the proposal for a single supplier registration process and equivalent and accessible wholesale pricing across all member states. We know many business customers with operations in multiple EU cities who are not able to enjoy the benefits of a single communications infrastructure because of a fundamental lack of cooperation and facilitation by incumbent network operators in other member states.

Section 4

25. 4.18: Leased line business connectivity is increasingly being overtaken by fibre broadband provision in areas where fibre is available. The next review should include a study of leased line/fibre substitution. It should also include a study of leased line satisfaction levels in areas where fibre is available locally to consumers, but is not made available to business customers.
26. 4.49: Ofcom should set plans in place this year to ensure UK emergency call-handling centres are prepared to handle the packet-data/voice message transmissions from 'e-call'

units, which the EU has mandated to be installed into all new cars from 2015. These plans should include ensuring mobile networks are configured to allow transmissions from e-call units to roam in a network-agnostic fashion to the strongest local signal, in the same way as conventional 999 calls from mobile handsets.

27. 4.62: See answer 26. E-call is already under trial in several EU member states, and a body of evidence from the last three years' live testing is available from ERTICO to help inform UK best practice.
28. 4.72: FCS is very concerned that public money is being used to subsidise an incumbent monopoly operator (BT Group) to roll out fibre to UK households with no concomitant requirement to prioritise or even to equip business areas in the same geographic location. FCS would be very interested to see a benchmarking exercise which compares the availability of business-quality broadband to SMEs in the UK with that in other EU member states.

Section 5

29. 5.10: FCS welcomes Ofcom's acknowledgement of the special needs of the business community. There has been some useful progress over the last 12 months, particularly in examining areas like Openreach service levels to business CPs and the equivalence of access issues surrounding BT's technical inability to transfer certain numbers to an alternative network.

Nonetheless, FCS feels Ofcom's commitment to business subscribers extends little further than fixing long-term problems once they have been brought to Ofcom's attention. Business customers are consistently by-passed by the Openreach fibre roll-out, and cabinets serving business areas are consistently not fibre-enabled even when neighbouring cabinets serving consumers are. The failure of BT to comply with the Undertakings, and move all numbers over to EMP – equivalence management platform -- by December 2012, disproportionately disadvantaged business and commercial users, as the vast majority of the remaining numbers are ISDN lines. Ofcom pursued no action against BT for this failure, other than agreeing some new deadlines.

We hope the above is useful in informing Ofcom's priorities for the coming year, and look forward to working with Ofcom directors and staff to create satisfactory outcomes for the UK business community.