

Email: marco.marini@ofcom.org.uk

Marco Marini
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

12 February 2009

Dear Marco

Ofcom annual plan 2009-10 consultation: FCS response

The Federation of Communications Services [FCS] is the trade association for the communications services industry in the UK representing over 300 companies who deliver telephony and wireless products and services. A directory of FCS members may be found on the website www.fcs.org.uk.

The FCS welcomes the opportunity of responding to the consultation as the majority of our members are affected by Ofcom's policies.

Ofcom strategic framework

We support the principle of a 3 year strategic framework for Ofcom as it provides a welcome element of regulatory certainty to the telecoms market. The current framework is broad in scope and continues to cover relevant areas. However we believe that the key objectives should each be reviewed and if necessary refined to take account experience and today's market conditions. In particular we propose:

1. In ensuring the delivery of public interest objectives, Ofcom should include benefit to the UK as a whole and not only consumer interests; the current economic uncertainty highlights the requirement to keep Britain working and access to all forms of communications services [not only public telephony] for business is a key input that should be central to Ofcom's activities
2. Similarly when considering the management of radio spectrum. Ofcom should prioritise access by business rather than entertainment, which appears favoured from the text in section 3.10. The draft plan was issued before the publication of the Carter interim Digital Report. The latter does not mention auctions but suggests an allocation of spectrum and trading by the five mnos to overcome the delays caused by legal challenges. This appears to herald a significant change of direction to Ofcom's spectrum policy, which might be replicated for other spectrum users.
3. We welcome Ofcom's proposals in section 3.16 to conduct new work focusing on business markets and anticipate that Ofcom will include supply to SMEs as well as the major corporate market. The perception amongst SMEs is that Ofcom is pre-occupied with the major multi-national organisations to the detriment of SME segment of the market. FCS is interested to contribute to this work.

Detailed work programme

1. Radio spectrum management

We have a major concern that the UK approach to spectrum management is effectively excluding SMEs from acquiring spectrum in favour of large multinational organizations with ultimate control outside the European Union. We caution also that the UK approach to spectrum management affords insufficient attention to the requirements of public safety services and the critical national infrastructure.

On balance, UK industry prefers a more positive approach to standardization and harmonization of spectrum and associated equipment and services than the current pure market philosophy, which in our experience lacks technological and user consideration

2. Releasing spectrum including the digital dividend

We welcome, therefore, Ofcom's proposals to align the digital dividend spectrum with Europe, so that economies of scale are achieved for manufacturers, and request a clear statement of how Ofcom will decide which allocation process it will use for any particular band. We believe that Ofcom should not only focus on allocating spectrum to the larger players in public telephony but ensure that licensees requiring smaller spectrum blocks and in localised areas are also able to benefit from Ofcom's allocation processes. It is a charade to believe that spectrum won by larger players will be made available to their smaller competitors through trading. Ofcom considered that this would be the outcome of the UHF1 auction in September 2006 but it did not happen. Therefore Ofcom will have to consider how this vital set of spectrum users can be accommodated in its programme for 2009-10. We propose that in any auction design there are some allocations of 500 kHz to satisfy the needs of smaller suppliers. We also suggest that Ofcom looks at refining its market based approach to spectrum to ensure that all interest groups can be included.

3. Promoting competition in fixed telecoms

We welcome Ofcom's commitment to the principles of equivalence- section 5.9- and its continuation into the next generation access market. We are concerned however that Ofcom focuses on competition in the form of alternative operators and we urge Ofcom to fully recognise the importance of competitive CPs in its work. The growth of WLR by smaller competitive CPs has been more rapid than LLU, but receives less prominence in the draft plan. We welcome however the work by the OTA2 to support Openreach to develop equivalent services for WLR and LLU providers.

4. Empowering citizens and consumers

We support Ofcom's aim to achieve a good deal for citizens and consumers and that this should be delivered by a fair competitive trading environment. We particularly welcome the work programme outlined in section 5.63 to improve switching procedures. We encourage Ofcom to embark on a full scale strategic review of migrations, drawing together the processes for fixed, mobile and broadband into a seamless experience for suppliers and customers. Earlier projects appear to have stalled. Central to this work would be the review of number portability, currently underway, and tariff transparency. We are concerned that the current piecemeal approach to each subject will not deliver adequate customer empowerment and we urge Ofcom to initiate a high level programme, involving industry, to set a clear strategic direction for the future. Once achieved, there are already processes in place, such as OTA, to support delivery, but the clear strategy has to come first.

5. Mobile sector assessment

FCS has frequently raised concerns about the barriers to entry to the mobile market for new entrant operators and CPs and we look forward to the next stage of Ofcom's assessment, when a consultation document is planned. Among the barriers to entry for operators are mobile number portability and national roaming.

Mobile number portability processes are governed by the MNP Operators steering group- <http://www.mnposg.org.uk>. The system is owned by the 5 large mnos and mobile new entrants have spent the last 2 years seeking to access the system. However we must congratulate FCS member **Mapesbury Communications** for breaking through the "glass ceiling" and achieving mnp with the 5 mnos by Christmas 2008. While Mapesbury has succeeded, other new entrants have decided that the UK market is not welcoming and moved to more open markets elsewhere in the world.

We encourage Ofcom to consider how it can regulate the mobile oligopoly and remove the barriers to entry for new players.

Ofcom's next strategic framework

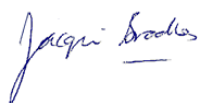
Taking account of the changes in the market and with the experience of Ofcom regulation since 2003, we suggest that the next framework includes:

1. Refining Ofcom's spectrum policy to ensure that spectrum is available for the benefit of the UK as a whole, rather than the one size fits all approach of the current spectrum market policies.
2. Ensuring there is competition in the converging telecoms markets in both wholesale and retail markets, and responding rapidly to assess new markets for dominance such as in spectrum holdings.
3. Expanding the interpretation of public interest objectives to include the well being of the business community as well as broadcast and media literacy.
4. Introduction of a proportionate independent complaints mechanism to allow grievances against Ofcom actions to be resolved through a lower cost option than that judicial review or the Competition Appeals Tribunal.
5. More intelligent regulatory compliance to ensure that the polluter pays in Ofcom's and any of its agencies' policies and enforcement, rather than blanket prohibitions on the telecoms sector.

We particularly value Ofcom placing a list of current projects and the project leaders on its website, which helps stakeholders to identify subjects of interest to them. May we add a general plea that for any project please can Ofcom consider the interests of the smaller and new entrant suppliers as well as the major players; FCS is happy to be the first port of call into this sector to facilitate two way communication.

We would be pleased to expand on our comments if that would be helpful.

Yours sincerely



Jacqui Brookes OBE
CEO