

Department for Business Innovation and Skills

Consultation on the proposed new duties for Ofcom:

- **To promote efficient investment in infrastructure**
- **To provide full assessment of UK communications infrastructure every two years to the Secretaries of State**
- **Alert the Secretaries of State to any matters of high concern regarding developments affecting the communications infrastructure**

Response by the Federation of Communication Services

September 2009

Introduction

The Federation of Communication Services [FCS] is the trade association for the communications services industry representing 300 companies that deliver fixed, broadband, IP, mobile and radio based products and services. A list of FCS members may be found in the members' directory on the FCS website-www.fcs.org.uk.

FCS has been a supporter of the Digital Britain project and welcomes the opportunity of replying to the current consultation on extending Ofcom's powers.

We particularly applaud the recognition by both Government and Ofcom of the need to take a broad view of the nation's requirements with regard to communications infrastructure and that telecommunications is firmly classed as a utility. In order to deliver services to customers open access to infrastructure is essential to drive competition and innovation in retail services. Within the new regime we urge Government to ensure Ofcom has a rigorous focus on retail competition and does not dilute its activities in this area. Our answers to the specific questions are set out below.

Questions on Investment Duty

Question 1: Can you identify any specific benefits, or risks, arising from the new duty to promote efficient investment in infrastructure?

FCS believes that there are benefits arising from the new duty, most importantly recognition of the essential nature of telecoms infrastructure and the implicit acknowledgement that longer term planning is crucial within this utility.

It is also welcome that the investment should be "efficient" as this will encourage a range of investments from new entrants as well as incumbents from those providing full national infrastructure to partial infrastructure such as switches. Within the definition of investment must be the investment in continuing maintenance and highest standards of resilience and availability of the infrastructure.

In section 1.7 the consultation refers to “a perception that Ofcom is required to consider competition above all else”. In our view Ofcom must continue to focus on competition into the future. Ofcom does have a short term view of consumer interest and places less focus on longer term support for the market to deliver benefits in future, such as an effective fixed and mobile number portability regime and customer migration.

We welcome the intention in section 1.8 of the consultation that Ofcom will set out investment considerations more explicitly in its impact assessment and in doing so will need to build up a knowledge base from the industry to avoid lengthy delays when issuing consultation documents.

One particular risk arising from the new duty is that Ofcom might dilute its efforts away from ensuring that the communications market is competitive; we would expect Government and Ofcom to maintain a watching brief to ensure this does not happen.

Chapter 3a of the Digital Britain report says: “a sudden removal of communications would not only bring business and commerce to a halt, but also our traffic, public services, finances, energy supply...”

It is clear from this that the definition of infrastructure not only refers to the privately owned public access telephony infrastructure delivering fixed, broadband and wireless communications to the public, but also refers to the privately owned radio services needed to keep the traffic, public services, energy supply etc functioning. Such radio services rely on continuing access to radio spectrum from Ofcom.

Question 2 Are the proposed limitations on the new duty, such as the reference to 'efficient' investment appropriate, and can you identify others?

In addition to the points made in the answer to question 1, we argue that Ofcom should be looking at investment overall and encouraging efficient investment by the parties providing the infrastructure. In order to measure the “efficiency” of investment Ofcom may need to undertake national or international benchmarking. Use of the infrastructure to ensure an optimum return on the investment is another measure that Ofcom could consider, and this requires access to the infrastructure on fair and transparent terms by competing CPs.

Question 3: It is possible that the new duty will lead in some circumstances to conflicts with other duties. If so do you agree that the framework in the Communications Act provides sufficient flexibility for Ofcom to be able to resolve these?

As we explained in our answer to question 1 we believe that there should be no dilution to the duty to ensure competition as set out in the Framework Directive; we agree that the EU law should take precedence.

Question 4: How might the new principal duty influence the investment decisions your business takes?

We believe that FCS members will gain greater confidence in their future infrastructure investment by the implementation of the proposals.

Questions on the Reporting Duty

Question 5: Can you identify any specific benefits, or risks, arising from the new duty for a biennial report?

Once the reporting duty is in place it will become business as usual for the companies involved and may be considered an asset for the shareholders of those companies

Question 6: Are the general areas (coverage, quality, resilience, competitiveness) covered by the reporting duty appropriate? Would you add or remove any?

In section 1.11 the consultation document refers to Ofcom monitoring and reporting on “the overall communications infrastructure in the UK”.

We contend that the critical and mission critical infrastructure [CNI] of the UK does need to be included in that its use of telecoms and wireless services contribute to CNI effectiveness. Within the scope Ofcom would need to report on its own spectrum allocation to the CNI sector.

Question 7: Do you agree that the specific measures to be reported on should be the subject of further consultation between Ofcom and industry?

Overall the specific measures appear broadly relevant but there will be a need for further refinement involving all parties in industry; Ofcom should have an approach of inclusiveness when addressing this point. It is not clear which of the communication providing companies are included within the scope of the proposals and any discussion by Ofcom must include all relevant parties, including FCS members.

Question 8: Are there any specific measures which you can identify at this stage and which should be considered as part of this process i.e. additional to those in paragraph 1.11 (a) to (e)?

Not at this time

Question 9: Do you agree with the proposed frequency of the report, and the proposal that a non-confidential version of the headline conclusions only should be made public?

We believe that it is in the national interests as well as in the interests of all players in the communication services industry for as much information as possible to be placed in the public domain.

Question 10: Government are proposing to give Ofcom power to require information from operators to enable them to compile this report. Any information provided for this purpose will be fully exempt from disclosure under freedom of information legislation. Are there any risks or concerns with this approach?

Providing that the final information reported is sufficiently comprehensive we agree with the proposed exemption from FOI disclosure and recommend that Ofcom considers whether other data that it holds is similarly exempted.

It is important that any request for information is proportionate to each company's investment in the market.

*In relation to both duties described here,
Question 11: What is your estimate of the economic impact to consumers and business
of the proposed changes to Ofcom's duties?*

We do not have this information

FCS would be happy to discuss the points made in this response should that be of help.

Jacqui Brookes OBE
CEO
Federation of Communications Services
Burnhill Business Centre
Burrell Row
Beckenham
Kent BR3 1AT
020 8249 6363