

*Representing the Communication Services Industry*



**Ofcom draft annual plan 2011/12**

FCS response- 1 March 2011

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## Summary of main issues

FCS recognises that Ofcom has had to reach tough decisions as to where to allocate its reduced resources. In this response FCS encourages Ofcom to

- Provide greater clarity on its resource allocation and to measure the success of its target for each project
- The recognise the future spectrum demands of the professional radio sector and to place greater focus on interference monitoring and record keeping
- Continue to focus on the importance of competition in retail markets and with urgency address the problems of consumer switching, which we believe should be gaining provider led
- Pro-actively consider how co-regulation across the industry could effectively deliver policy principles

## Introduction

The Federation of Communication Services, FCS, is the UK trade association representing the communications services industry. Our 315 members deliver products and connectivity via radio, copper and fibre. A directory of FCS members may be found on the website [www.fcs.org.uk](http://www.fcs.org.uk)

We welcome the opportunity of responding to Ofcom's draft annual plan for 2011/12. Our members' interests relate to radio spectrum allocation, competition in retail markets, customer switching and co-regulation. In this response we comment on Ofcom's projects in each of these areas.

The most recent annual survey of FCS members carried out in February 2011 identified specific regulatory concerns, which we encourage Ofcom to address either within its proposed projects or as additional tasks:

- Business radio - the impact of new digital technology on WT licences and management of interference
- The continuing requirement for spectrum access and Ofcom policies including spectrum trading and leasing
- Competitive telecoms market- poor Openreach performance and service delivery
- Next generation access to services for CPs and resellers
- Customer switching and fixed number portability
- A concern that small business suppliers are perceived as having lower credibility than the major telcos
- A measure of business services to SME customers to be included in future market reports

## Ofcom priorities

There are undoubtedly many projects that Ofcom might, for reasons of competition or consumer concern, consider within the annual plan and then finally select what it considers to be the most

important. However it would be helpful for stakeholders in industry and among consumer advocates to know what projects did not appear in the final cut. Recognising that Ofcom has limited resources industry might be able to support some of the projects not set out in the annual plan if such a list were available.

We agree with the 5 broad areas in section 3.3 that capture the core of Ofcom's work. In this response we have commented on each issue under the headings set out by Ofcom.

As Ofcom has undergone reorganisation in response to reducing its costs it would be helpful to improve transparency by:

- The link to the current organogram of policy leads clearly set out and accessible on the Ofcom website – we welcome this addition on 1 February and its ongoing maintenance
- Including a reference as to who is leading which project- ideally this would be in the draft plan but otherwise we encourage Ofcom to include such a list in the final plan and maintain it on the website
- Providing rough costings for each of the projects in the plan; many FCS members contribute to Ofcom's costs via spectrum licence fees or contributions to networks and services administrative fees and they seek transparency as to how these contributions are planned to be used.

## Measures of success

The NAO report- [Ofcom the effectiveness of converged regulation](#) – November 2010 said "Ofcom needs a better articulation of the intended outcomes of its activities and how its work achieves those outcomes."

We note that Ofcom has aimed to set out its major objectives in the draft plan and the strategic purposes are identified, but the actual measurable outcomes are less clear. For example "*promote effective and sustainable competition*" to 2015 leading to "*effective choice in platforms and services and efficient prices*" might be defined further as "*for all UK business customers and individual consumers a competitive choice of platforms and retail services from a variety of service providers*". The measure would be satisfaction for each of the end user categories, i.e. large business, small business and individual consumer, that they have competitive choice of platform and a multiplicity of suppliers, measured by survey.

To improve this reporting Ofcom should set out at the beginning of each year where it wants to get to in terms of outcomes and a statement at year end as to the achievement against targets. In addition this process of setting outcomes and targets and how success will be measured should be a working principle included in each consultation

For each consultation (where Ofcom typically carefully sets out its policy objectives) there should also be a detailed program of how and when it intends to measure the success of the outcome. e.g. post intervention surveys and analysis.

This way Ofcom can learn from its successes/failures and develop a track record i.e. a knowledge base. At the moment Ofcom can appear to act "open loop" with the next project team having new exciting ideas, but based on no measured outcome of earlier interventions. We cite the policy on 0870 as a case in point; there has been no review of the effectiveness of the 0870 intervention in 2006 and now the

NGCS review proposes to scrap the range all together.

Ofcom should also perform a Health and Safety risk assessment in each case, in particular where it intends to modify network operation e.g. PCA's or close codes. This to avoid risk to life and property

We encourage Ofcom to include within its annual communications market surveys separate reporting for the SME end users. You Gov carried out a survey of the SME end users for FCS in September 2010. The You Gov [research](#) showed that SME end users are not wholly dependent on the larger telcos for their services, but that their use and satisfaction levels with their CP and reseller suppliers was very high.

The [UK and SME communities](#) are lauded as the engines of the economic recovery and reference to their communications use and their suppliers in Ofcom's 2011 research would provide a better understanding of this important sector.

## **Promoting effective and sustainable competition**

We welcome and agree with Ofcom's statement that *ex ante* competition policy is still required to support the interests of all communications customers. While there are innovative and entrepreneurial providers and new entrants to the communications market there will continue to be a disproportion in market power between them and the incumbent telcos and Altnets, especially where they are vertically integrated. This will continue to require firm competitive regulation.

Ofcom has identified two priority areas. We would suggest a third and that is the competitive environment for the professional radio sector embracing access to antenna sites, distribution and retail services.

The delivery of superfast broadband is of increasing concern to communication providers and resellers [CPs] within the FCS membership; over 50% of respondents to the February 2011 FCS member survey cited access to NGA voice and broadband as an increasing worry. The Wholesale Local Access review carried out in the last year did not mandate a wholesale product to support equivalence of inputs to the reseller level, unlike Wholesale Line Rental which has over 6 million customers. Instead a passive local access wholesale product, VULA, described in section 5.7 is mandatory. This product can only be used by a small number of vertically integrated CPs and not the hundreds of resellers currently delivering WLR.

Based on Ofcom's statements in its consultation on the *Review of the wholesale fixed analogue exchange lines markets*, we believe that there is a continuing SMP obligation on BT Group to provide a voice product in this market, including those areas where FTTP is deployed.

We urge Ofcom to additionally review with some urgency in the 2011/12 annual plan the delivery of a wholesale NGA voice and broadband service to all customer types. We are concerned that the reseller sector will not be able to deliver the full suite of services in areas where there is only fibre. The outcome will be a lessening of effective and sustainable competition, particularly for those customers that rely on reseller services.

## **Promoting the efficient use of public assets**

FCS welcomes the new principle of promoting the efficient use of public assets and the focus on spectrum issues and developments.

We welcome Ofcom's recognition in section 3.8 et al that **“the market alone is unlikely to secure efficient allocation and use of public assets like spectrum and numbering in all cases” - “the scarce nature of these assets requires us to ensure their maximum value to society. There continues to be a role for longer term planning and direct management to achieve this. For example, the international harmonisation of spectrum can add significantly to its overall social value”**

FCS has argued that there is need for a direct approach to spectrum allocation for Critical National Infrastructure and Business Radio users following a comprehensive study of this sector published as a contribution on the [Strategic Future of Business Radio](#) in 2010.

Ofcom refers to its resource limitations in sections 3.14, 15 and 4.11. We note that there have been reductions in the Business Radio policy section of Ofcom in the past few months and we request that no further cuts are made to this area.

Spectrum auctions figure prominently in the draft plan. In section 5.12 Ofcom refers to the auction of spectrum at 600 MHz and we would welcome elaboration on the detail of the spectrum to be released and the potential uses that it may have other than local TV.

Ofcom is continuing to improve emissions in the 2.6 and 3 GHz bands which is welcomed as such spectrum could be of use to professional communications as well as public telephony.

In section 6.20 Ofcom confirms its intention to proceed with proposals for spectrum trading and leasing. We caution that the proposals for leasing should not interrupt current business models such as SMOs, Common Base stations and Short Term Hire. We would also seek to ensure that the costs associated with trading and leasing procedures do not outweigh any benefits that could be derived.

We support Ofcom's engagement within European and other international fora on radio spectrum matters, referenced in Section 6.24, such as CEPT/ERC, BEREC, RSPG and RSC; this engagement is essential to enable spectrum to be better harmonised internationally. We note the importance of FMPT 38. Such activity would enable Ofcom to temper EU spectrum policy in accordance with UK policy

We support any Ofcom support for future Government action to make necessary changes to the RSPG to provide for dedicated spectrum for the CNI community; this would include UK government action at the EU Commission, Parliament and Council.

In section 6.28 Ofcom sets out plans to continue current Spectrum Enforcement action to recover unpaid licence fees. Licensing renewals have been subject to some degree of confusion in the past two years and the sympathetic approach currently being taken is welcomed.

We welcome Ofcom's confirmation in section 7.5 et al that it has a duty to investigate and take action upon interference cases. FCS has identified a potential for interference arising from the allocation of “technology neutral” licences and is keen to work with Ofcom to mitigate this potential

## **Helping communications markets work for customers**

From the perspective of FCS members delivering telephony and broadband services this strategic purpose is the most important. We agree that the market failures identified by Ofcom in section 3.9 are current

- Limited incentives for switching processes

- Complex products and pricing
- High barriers for consumers seeking to leave their existing providers

Ofcom has reviewed customer switching and FCS members are contributing to the Ofcom Switching Working Group. Co-operation between industry players is key to setting in place processes that are suitable for customers and for sustainable competition in the delivery of retail services. FCS supports Gaining Provider led switching processes, recommended by Ofcom in its consultation on customer switching.

An area of consumer frustration that Ofcom does not include in its plan, but we believe is important, is to mandate national roaming between mobile networks.

### **Delivering Ofcom duties and value for money- co-regulation with industry**

We appreciate the efforts that Ofcom has undertaken to reduce its costs and review its operations and projects. There are continuing regulatory principles that emerge from Government and the European Digital Agenda. There will be implementation requirements on Ofcom and the industry to fulfil these new obligations. This calls for a new order of co-operation and co-regulation between Ofcom and the industry it regulates. FCS advocates that a co-regulatory body needs to be established now to bring together more effectively and cost efficiently the myriad of industry / regulatory groupings that currently exist in the networks and services area. We believe that industry should take the lead in setting up a co-regulatory forum and that Ofcom should actively support its creation.