

CWU RESONSE TO OFCOM'S DRAFT ANNUAL PLAN FOR 2012/13

The CWU welcomes the opportunity to comment on Ofcom's Draft Annual Plan for 2012/13. Ofcom's plan sets proposals for the regulation of the communications sector for the coming year. As in previous years the plan looks in detail at proposals for the telecommunications and broadcast sectors. It also sets out its broad intentions for regulation of the postal sector. The union's response is set out in two parts. The first responds to the telecommunications and broadcast sector (the communications sector excluding postal services), the second responds to Ofcom's outline of its proposed approach to the regulation of postal services.

Part 1: Regulation of the telecommunications and broadcast sector

Overview

In general the CWU is supportive of Ofcom's proposed Annual Plan for 2012/13. However the CWU would wish to repeat its concern from last year that the cessation of the Consumer Communications Panel and the Advisory Committee on Older and Disabled Consumers as distinct bodies is inconsistent with Ofcom's statutory duties as prescribed under the Communications Act 2003. A greater burden of responsibility is therefore placed on Ofcom to ensure that consumer views and concerns, especially those of older and disabled consumers, are adequately reflected within its consultation procedures and general operations. In addition it is ironic that at a time of public expenditure reductions, which in Ofcom's case is a budget reduction of 28.2% over four years by 2014/15, the demands of both the communications industries and consumers will multiply as demonstrated in Ofcom's own Draft Annual Plan. It is a case of having to do more with fewer funds available and this will present a pressure and strain on Ofcom in future years.

i) What are your views on Ofcom's proposed priorities for 2012/13?

Strategic Purpose 1: Promote effective and sustainable competition

The CWU has stated previously that in considering the deregulation of the wholesale market (paragraphs 4.4-4.7) there is an overriding need for transparency of maintenance and quality of service standards. If this is not done then such standards could slip as a consequence and this would impact negatively on BT's utilisation of performance management procedures. Specifically in this regard the CWU proposed that the Reference Order (RO) should set high minimum standards. The CWU also tabled the proposal that such minimum standards should extend to safety standards and be reproduced in any future commercial arrangements, along with the publication of Key Performance Indicators (KPIs) for provisioning and fault repair.

The CWU considers that such a reference to minimum service standards is necessary because of the continuing process of technological convergence in the telecommunications and broadcasting sectors across Europe guarantee quality and universal application across the telecommunications industry. This is because there is both a danger of having a patchwork of national and local networks all operating under very different service levels, and poor standards if the work is progressively sub-contracted to untrained operatives. It is vital therefore that there is a legal requirement for employers in the telecommunications sector to provide properly certified training as the technologies continue to converge

between the telecommunications and broadcasting sectors and if the government is serious in its objective of having the best broadband network coverage in Europe by 2015.

Related to the point above and in reference to paragraphs 4.8 and 4.9 the CWU has stated previously in its response to Ofcom's consultation paper 'Review of the Wholesale Broadband Access Markets' in June 2010, in noting Ofcom's objective in paragraph 1.11 of that paper to:

"...assess whether any CPs (Communications Providers) have a position of significant market power ("SMP"), which essentially means power to influence markets to a significant degree in a way that could harm consumers. Then, if any CPs have SMP, we assess the regulatory remedies that need to be imposed to address the SMP that exists".

The CWU emphasised that this assessment should focus beyond BT and on Virgin Media's cable network too as it now covers just under half of the UK, and that there should be a requirement for Virgin Media and other communication providers to provide open access to their ducts if competition is not to be restrained and more choice allowed in the market.

Strategic Purpose 2: Promote the efficient use of public assets

The CWU supports the timely spectrum clearance as proposed by Ofcom in paragraphs 4.13-4.17. The CWU is keen that the auction for awarding the licences to use the 800 MHz and 2.6 GHz bands is commenced with as early as possible in 2012/13. This will assist with the roll-out of such services to rural areas as quickly as possible in order to guarantee the usage of reliable wireless services and will ensure that the UK does not fall behind its European neighbours in economic competitiveness as they continue to proactively invest in their broadband networks especially with the progression of 4-Generation networks.

The CWU also supports Ofcom's aims through its full spectrum plan to deliver the government's guarantee of wireless spectrum for the London 2012 Olympic and Paralympic Games as proposed in Paragraphs 4.18-4.19. In this regard the CWU reiterates the necessity for minimum service standards of those operatives involved in telecommunications and broadcasting sectors during the Olympics to not only guarantee quality and safety but also security during the games. This is because there is a danger of very different service levels, poor standards of work and potential security breaches if the work is sub-contracted to either untrained or poorly trained operatives. It is vital therefore that there is a pre-requirement for all telecommunications employing organisations during the games to provide a properly vocationally certified and experienced workforce.

Strategic Purpose 3: Help communications markets work for consumers

The CWU supports the regular monitoring by Ofcom on both broadband speeds and customer complaints data as outlined in paragraphs 4.21-4.24. The CWU has proposed on previous occasions that Ofcom should take steps to improve awareness amongst consumers of alternative dispute resolution schemes as a very important mechanism for effective dispute resolution. Ofcom's own commissioned research has clearly indicated that greater awareness of alternative dispute resolution schemes produces improved outcomes, reduces emotional distress for customers and does not lead to over usage. Furthermore, greater awareness will both create an incentive to improve complaint handling and will reduce the overall time spent on dealing with complaints. However there still appears to be an imbalance as some communication providers' employees will know to do this, but for those that do not, the potential backstop for unsatisfied customers is eight weeks. This imbalance is not addressing the issue of customer awareness and empowerment. There will potentially be situations where employees cannot or will not tell customers until the eight

weeks are up; there will also be cases of customers stating that they should have been made aware of the escalation procedure prior to the eight weeks concluding for internal resolution. The CWU presses Ofcom to rectify and standardise this situation across the industry.

The CWU welcomes Ofcom's commitment to consult on switching processes early in 2012 as indicated in paragraphs 4.27-4.28. The CWU acknowledges the progress Ofcom has made on this matter and supports all relevant measures to ensure that switching is made as easy and as unproblematic as possible for customers. In this regard the CWU would like to reiterate its concerns about the existence of automatically renewable contracts (ARCs or 'rollovers') to residential consumers as these contracts represent a potential contractual barrier to switching. This is against the background of increasing levels of bundling of products and services and restricts competition. The CWU considers that ARCs are harmful to the competitive process and so to consumers as a whole and Ofcom should take action against them. The CWU also encourages Ofcom to continue its work in reviewing additional charges in contracts for communications services (including non-direct debit and early termination charges).

The CWU fully endorses Ofcom's comment and approach in paragraphs 4.35-4.37 concerning the provision of communication across the nations. The CWU considers it is imperative and timely that broadband roll-out across the nations is progressed as quickly as possible if the UK economy is not to fall behind its European competitors, and as technology is moving apace to ensure more rural and remote locations are not left behind creating geographic 'digital divide'.

Strategic Purpose 4: Provide appropriate assurance to audiences on standards

The CWU supports Ofcom's commitment to providing customers with assurances on standards and to reviewing the efficacy of the Authority for Television On Demand (ATVOD) during 2012/13 in paragraphs 4.38-4.41. The CWU supports an active regulatory role for Ofcom in maintaining the highest standards especially when investigating breaches of broadcast licences, investigating fairness and privacy complaints, and considering statutory sanctions. The CWU also supports Ofcom's active regulatory approach to content regulation to ensure that it remains alert and updated to reflect new market entrants and increased competition so that it continues to serve the interests of citizens, consumers and stakeholders.

Strategic Purpose 5: Contribute to and implement public policy defined by Parliament

The CWU welcomes Ofcom's forthcoming advice to government during 2012/13 arising from its consultation on market plurality across the media as reported in paragraphs 4.43-4.45. The CWU has consistently argued for a level-playing field for all competitors in the telecommunications market. The CWU also welcomes Ofcom's advice and assistance to the on-going Levenson Inquiry especially any information it can provide in relation to potential unfair competition or market share abuses by Sky TV given that the integrity of senior executives at News International have recently been publicly brought into question through cross-examination before the House of Commons Culture, Media and Sports select committee.

The CWU actively supports the promotion of investment and competition in the delivery of superfast broadband, as outlined in paragraphs 4.46-4.50, as long as competition does genuinely deliver investment. The CWU has responded on many occasions before to Ofcom consultations that if the present coalition government is serious about genuine social

inclusion as part of its 'Big Society' agenda and is committed to the rapid roll out of superfast broadband, then it has to recognise that market investments alone are never likely to reap sufficient commercial benefit in huge swathes of the country. Therefore the objective for a widespread superfast broadband network and digital inclusion will remain purely an unfulfilled aspiration unless the government itself commits to further public investment.

The CWU has made the case that the failure to build a universal broadband network for the United Kingdom in the short term would create a greater threat to the nation's economy and the financial security of the communications sector than any risk posed to competition by public funding. The benefits of higher productivity, increased innovation, improved access to new markets and new business opportunities would all be lost. In addition it has been estimated by the London School of Economics and the Information Technology Innovation Foundation in their report 'The UK's Digital Road to Recovery', that the impact on employment from investment in superfast broadband is that 280,000 jobs would be created by the roll-out of the Next Generation Access.¹

The CWU is also concerned that both the geographic and educational 'digital divide' is closed as quickly as possible to extend broadband to the rural and remote areas of the UK and to increase internet literacy through promotional materials and programmes.

At a recent Westminster eForum in November 2011 it was pointed out that around 10% of the UK will not be able to receive superfast broadband in the next decade and that government funds by themselves were insufficient. Fujitsu, who originally promised in April 2011 that it would offer a fibre-to-the-home network to those homes bypassed by commercial broadband roll-outs, in reviewing its commitment stated that for the Highlands and Islands of Scotland the sums did not add up to make the business case work even with government funding. Similarly Cable and Wireless has also withdrawn from the pilot in Cumbria on the same basis. The CWU considers that the government ought to consider speeding up the pace of rural broadband roll-out by making the process more cost effective through increased investment and by making the bidding process for Broadband Delivery UK funding far easier and less cumbersome.

The CWU supports Ofcom's proposals as outlined in paragraphs 4.51-4.52 for implementing the online copyright infringement provisions of the Digital Economy Act 2010 (DEA). Specifically Ofcom's duty to make a code in accordance with the requirements of the DEA, its consultation on a tariff for the processing of copyright infringement reports by ISPs and on establishing an independent body to hear subscribers' appeals against reports.

ii) What are your views on Ofcom's proposed work areas for 2012/13?

Strategic Purpose 1: Promote effective and sustainable competition

In considering paragraphs 5.5-5.7 the CWU welcomes the previous Ofcom decision in March 2010 requiring Sky Sports 1 and 2 should be offered to retailers on platforms other than Sky's at prices set by Ofcom. We also welcome further proposals that would extend consumer choice and the continued development and innovation of television platforms. However the CWU considers there is a potential danger that prices could be set so high as to become prohibitive for other communication providers to purchase. This may well also apply to premium film channels dependent on the outcome of the Competition Commission

¹ 'The UK's Digital Road to Recovery' - London School of Economics and The Information Technology and Innovation Foundation, April 2009

investigation as referred by Ofcom. The CWU supports this referral and indeed we were the first to do so in a previous review of Ofcom's Annual Plan and are awaiting with interest the Competition Commission's decision.

The CWU supports Ofcom's international role through the Body of European Regulators for Electronic Communications (BEREC) as described in paragraphs 5.13-5.14. The CWU wholeheartedly agrees that Ofcom's continued full participation in BEREC is essential if there is to be a consistent application of regulation remedies across Europe.

Strategic Purpose 2: Promote the efficient use of public assets

The CWU supports Ofcom's role in ensuring compliance with European Union policy objectives and areas of European Union Radio Spectrum policy where Ofcom does not have explicit delegated powers, as detailed in paragraphs 5.32-5.33. This includes the implementation of the European Radio Spectrum Policy Programme, including co-ordination of UK inputs to a European spectrum inventory.

The CWU supports both Ofcom's assessment of the World Radio Conference (held in Geneva in January 2012), and its preparation for the next conference in 2015 on those issues relevant to the UK's spectrum policy goals.

Strategic Purpose 3: Help communications markets to work for consumers

The CWU continues to be concerned about ensuring the adequate provision of services for consumers with hearing impairments as outlined in paragraphs 5.34-5.36. Last year the CWU expressed its view that Ofcom was reducing the voice of such consumers through its abolition of its Advisory Committee on Older and Disabled Consumers. The CWU made it clear that it viewed this measure as a retrograde step and a false economy which would negatively impact on Ofcom's statutory duty to further the interest of citizens and consumers, and would be construed publicly as Ofcom lessening its commitment to equality issues. The CWU remains of the view that Ofcom is not fully meeting such legal obligations under the Communications Act 2003 as it is still unclear from the provision of limited information from Ofcom how its financial reductions have impacted upon such consumers.

The CWU agrees, as outlined in paragraphs 5.37-5.39, that the perpetuation of mobile not-spots continues to be very problematic in service interruptions for both consumers and businesses, especially in rural and semi-rural areas. The CWU is concerned that service interruptions in such not-spots needs to be resolved as quickly as possible for the benefit of the UK as a whole, and encourages Ofcom to utilise its enforcement and regulatory powers to the full in order to rectify such problems.

Specifically the CWU is concerned that the content of the government's proposals for investment in the new high-speed broadband internet structure and mobile phone 'not-spots' assumes high levels of private investment in the roll-out of the Next Generation Access (NGA) for which there is no guarantee that this will be achieved. In this regard the CWU welcomes the recognition of this problem by the government in its proposals, as mentioned in paragraph 2.7, to invest £150 million in new infrastructure to improve mobile coverage in areas of the UK where it is poor or non-existent. This includes most significantly Scotland where the non-spot areas account for 15.5% of the nation's total, and where continued inability to address this issue will further inflame current political debate over Scotland's independence referendum.

The CWU reiterates its proposal that mobile operators and content providers should also make a financial contribution to the proposed roll-out of the NGA through a charge on the

profits from their revenue streams over time. This is because mobile operators will gain significant operational benefits through increased back haul capacity and content providers stand to gain significant business opportunities and revenues through the roll-out of the Next Generation Access fibre networks to the 'Final Third'. This charge should be on top of the contribution they are already making to broadband through 3rd generation spectrum licences (and 4th generation to come), so that they are not gaining a free 'piggy-backing' on the existing network operators risk and innovation investment plans. As in most cases such mobile operators and content providers will be the first ones to benefit initially with the least capital lay-out cost from the roll-out and may well be the only ones to make significant profits in the short to medium terms.

In relation to paragraphs 5.40-5.42 the CWU supports Ofcom in continuing to monitor progress on these matters; however, it firmly believes that if the problems around maintaining neutrality and internet openness are to be countered then minimum standards to preserve the 'end-to-end' principle should be enforced by governmental regulation. At the moment such issues are left to the market of operators and providers on the basis of their own 'best efforts' of monitoring and assessment to guarantee neutrality and openness. This simply is not adequate with the increase in managed services. Instead what is required are steps that build upon the market's 'best efforts' principle through legislation that promotes minimum standards.

The CWU considers that traffic management is an essential requirement for operators if they are to plan, co-ordinate and maintain the services they provide to the customers. In practice traffic management is performed through the differentiation of services. This differentiation is usually practiced on the basis of the prioritisation of traffic through pricing mechanisms.

However, the CWU is aware that other forms of prioritisation do take place. This has primarily taken the form of restrictions placed upon an end user's ability to access certain internet applications such as slowing of download speeds for the streaming of video content and for content downloading between users, and on VoIP services offered by third parties. This has implications both for other providers and consumers in restricting access and content. At the same time the CWU understands that it is currently extremely difficult to make available the same quality of service conditions and parameters to all providers in the same situation; some providers will want to pay more through exclusive agreements in order to offer an improved service to customers, which may in turn spur innovation. The capacity restrictions will only exacerbate the problems of offering a similar quality of service. Therefore the CWU would repeat its desire to see the introduction of minimum standards through regulatory enforcement. A minimum prerequisite is that network wholesale carriers should be required to demonstrate that they do not favour their own retail operations in the priority and carriage of network traffic.

In addition, the CWU considers that transparency for consumers should consist of regular reports on each quality of service parameter made publicly available and easily accessible to citizens and consumers alike. The current standards should be reviewed on an annual basis to ensure they are still relevant and whether they can be improved.

Strategic Purpose 4: Provide appropriate assurance to audiences on standards

The CWU supports all sections of this strategic purpose, particularly ensuring efficient and effective programme standards enforcement primarily in relation to the protection of minors.

Strategic Purpose 5: Contribute to and implement public policy defined by Parliament

The CWU supports all sections of this strategic purpose, especially Ofcom's participation within the government's review of the legislative framework supporting the UK communications sector.

Part 2: Regulation of postal services

Overview

The CWU welcomes the appointment of Ofcom as the new regulator for postal services and the marked change in the approach to regulation that the new regulator is pursuing.

As we have consistently argued, the approach to regulation of the previous regulator Postcomm has proved very damaging to Royal Mail, the universal service and postal services in the UK. We therefore welcome Ofcom's recognition of the failures of the previous regime and its moves to safeguard the universal service.

The CWU has welcomed the opportunity to engage with Ofcom over its ongoing work on a new regulatory framework for Royal Mail and has responded to two major consultations since Ofcom took over responsibility from Postcomm in the autumn.

We have expressed our support for much of Ofcom's deregulatory agenda, particularly with regard to non-universal service products. We have particularly welcomed proposals on bulk mail, access, notification requirements for changes to products and services and the introduction of a notification requirement for operators entering the market for end-to-end services.

However, while we recognise that prices will need to rise, we have concerns as to whether Ofcom's proposals will be sufficient to protect the needs of domestic consumers and small businesses. We believe the regulator must retain a robust monitoring and control mechanism to ensure the price of all universal service products remains affordable.

We note that the areas of work proposed in the Draft Annual Plan include a complete review of the regulatory framework, and assume that Ofcom's recent consultations on postal regulation form part of this review. We welcome Ofcom's commitment to a review of user needs as part of this process and hope that Ofcom will take the opportunity to consider how to strengthen, not reduce, protection for vulnerable customers. We look forward to engaging constructively with Ofcom over the review process.

Q. i) What are your views on Ofcom's proposed priorities for 2012/13?

Strategic purpose 3, 'Help communications markets work for consumers' includes Ofcom's objective, to 'secure the provision of the universal postal service and determine the needs of postal users'.

We welcome Ofcom's prioritisation of Royal Mail's financial sustainability and agree that any failure to ensure this threatens the provision of the universal postal service (para. 4.31).

Ofcom has set out a range of regulatory proposals aimed at securing Royal Mail's financial position. As we have stated, we are broadly supportive of the deregulatory nature of Ofcom's

proposals; however, we have concerns over their impact on the future affordability of the universal service.

We have reflected in detail on these proposals in submissions to Ofcom made in December 2011 and January 2012.

Q. ii) What are your views on Ofcom's proposed work areas for 2012/13?

The CWU is supportive of Ofcom's proposed areas of work for 2012/13. While we do not support Ofcom's full range of proposals, we are nevertheless supportive of the objective of producing a new regulatory framework for postal services as a priority.

Further to our views on pricing regulation, we welcome Ofcom's proposed approach to ensuring the universal service provider is able to make a reasonable commercial rate of return on investment incurred in connection with the universal service. In particular we agree that Royal Mail should be able to earn a commercial rate of return on activities associated with the upstream and downstream activities in the former Royal Mail Letters business unit. We also welcome Ofcom's proposals to calculate the commercial rate of return based on all activities connected with the universal service. We would urge the regulator to set the allowed commercial rate of return at the higher end of the proposed scale.

While we might wish to raise concerns over the terms of reference of Ofcom's future review into the needs of universal service users - by emphasising the need to look at strengthening the universal service – we nevertheless recognise the obligation on Ofcom to undertake this piece of work and look forward to engaging constructively with the regulator.

Finally, we welcome steps towards a more stable regulatory framework which will reduce the uncertainty and associated costs incurred by Royal Mail under the previous regulator.

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