

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE SECRETARY OF STATE FOR TRADE AND INDUSTRY

AND

THE OFFICE OF COMMUNICATIONS

**RELATING TO THE CABINET OFFICIAL COMMITTEE ON UK
SPECTRUM STRATEGY AND OTHER MATTERS**

This Memorandum of Understanding is made between:

(1) The Secretary of State for Trade and Industry; and

(2) The Office of Communications, established by the Office of Communications Act 2002.

Whereas:

(1) It is the duty of the Office of Communications (“Ofcom”) to do such of the things set out in paragraphs (a) to (d) section 22(1) the Communications Act 2003 (“the 2003 Act”) as it is required to do by the Secretary of State in accordance with such general or specific directions as may be given to it by the Secretary of State;

(2) The Secretary of State has required and directed Ofcom in the terms attached in the Annex hereto (the “Directions”);

(3) The Secretary of State has power, in accordance with the relevant provisions of the 2003 Act, to give further directions to Ofcom:

(a) under section 22 (3) of the 2003 Act;

(b) under section 5(2) of the 2003 Act in relation to the functions of Ofcom under Part 2 of the 2003 Act and the enactments relating to the management of radio spectrum that are not contained in that Part for the purposes set out in section 5(3); and

(c) under section 156(1) of the 2003 Act; and

(4) The extent to which Ofcom implements decisions and recommendations of the Cabinet Official Committee on UK Spectrum Strategy known as the “UKSSC” may influence whether the Secretary of State wishes to give further directions to Ofcom.

The Secretary of State and Ofcom wish to set out their understanding as follows:

1. Decisions of the UKSSC

1.1 Ofcom shall not be bound by any decisions of the Cabinet Official Committee on United Kingdom Spectrum Strategy (the "UKSSC").

1.2 Without prejudice to paragraph 1.1, Ofcom shall have regard to decisions of the UKSSC which relate to Ofcom's spectrum functions (including in particular to decisions concerning the matters listed in section 5(3) of the Communications Act 2003), in the light of the Secretary of State's power to give the further directions to Ofcom referred to in recital 3 above.

1.3 The matters listed in section 5(3) of the 2003 Act are:

- (a) National security;
- (b) Relations with the government of a country or territory outside the United Kingdom;
- (c) Securing compliance with international obligations of the United Kingdom;
- (c) The interests of the safety of the public or of public health.

2. Meetings of the UKSSC

2.1 A senior representative of Ofcom (the "Ofcom Representative") shall be invited to attend all meetings of the UKSSC.

2.2 At meetings of the UKSSC the Ofcom Representative may participate in debates and discussions and make presentations on the matters to be discussed.

2.3 The Ofcom Representative shall not vote on any decisions taken at meetings of the UKSSC.

2.4 The Secretary of State shall endeavour to ensure that meetings of the UKSSC after 30th December 2003 shall be co-chaired by the Department of Trade and Industry.

3. The ITU

3.1 The Secretary of State shall ensure that Ofcom is registered with the International Telecommunication Union ("ITU") as the UK "Administration" as defined in the Annex to the Constitution of the International Telecommunication Union.

3.2 Proposals on the class of contribution to be paid by Ofcom to the ITU (in accordance with the Directions) may at any time be submitted by Ofcom to the UKSSC for discussion and then to the Secretary of State for decision. The Secretary of State shall make her decision in time for Ofcom to comply with its obligations in relation to payments to the ITU.

4. Policy line in international meetings

4.1 Ofcom shall submit the policy lines which it intends to take at world and regional radiocommunication conferences of the ITU to the UKSSC. Ofcom shall have regard to any decisions made by the UKSSC which relate to such policy lines, in the light of the Secretary of State's power to give the further directions to Ofcom referred to in recital 3 above.

4.2 The Secretary of State shall, in advance of meetings at which Ofcom is to represent HMG in accordance with the Directions, notify Ofcom in writing of the officers or servants of the Crown who have authority to issue written directions under section 22(3) of the Communications Act 2003 at those meetings. Ofcom shall inform the Secretary of State of the person at Ofcom to whom such notification to Ofcom is to be sent.

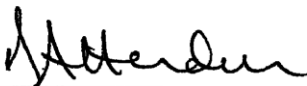
4.3 Where an officer or servant of the Crown is given such authority after the start of such a meeting, the Secretary of State shall notify Ofcom thereof as soon as possible and, so far as is reasonably practicable, in writing; and where the notification is not in writing, it shall be confirmed in writing as soon as possible. Ofcom shall inform the Secretary of State before the meeting of the person or persons to whom any such notification or written confirmation is to be sent or given (who may be the same or

different persons and may be at the offices of Ofcom in the UK or at the place where the meeting is being held).

5. Miscellaneous

5.1 This Memorandum of Understanding is not intended to have legal effect and shall not bind the parties hereto.

5.2 The parties shall review this Memorandum of Understanding regularly and will agree any amendments as may be necessary from time to time to reflect changes to the matters set out.



For and on behalf of the Secretary of State

8 Jan 04

Date



For and on behalf of the
Office of Communications

16 JAN 04

Date

ANNEX

DIRECTIONS GIVEN TO OFCOM

**COMMUNICATIONS ACT 2003, SECTION 22(1) AND (3)
REQUIREMENTS AND DIRECTIONS
TO THE OFFICE OF COMMUNICATIONS**

The Secretary of State in the exercise of the powers conferred on her by section 22(1) and (3) of the Communications Act 2003 hereby requires and directs the Office of Communications (“Ofcom”) as follows:

International Telecommunication Union

1. Ofcom shall provide representation on behalf of Her Majesty’s Government in the United Kingdom (“HMG”) on, and at meetings of, the following institutions of the International Telecommunication Union (“ITU”) which are referred to in Article 7 the Constitution of the ITU:

- (a) the Council;
- (b) the Radiocommunication Sector, including world and regional radiocommunication conferences, radiocommunication assemblies and the Radio Regulations Board;
- (c) the Telecommunication Standardization Sector, including world telecommunication standardization assemblies;
- (d) the Telecommunication Development Sector, including world and regional telecommunication development conferences; and
- (e) the General Secretariat.

Ofcom shall not pursuant to these requirements represent HMG at the Plenipotentiary Conference of the ITU or at the world conferences on international telecommunications.

2. Ofcom shall, in relation to representing HMG on such institutions:

- (a) attend such meetings of the institutions;
- (b) make decisions or agree or disagree with any proposed decisions;

- (c) provide any undertakings or assurances to such institutions or to third parties;
- (d) sign agreements on behalf of HMG;
- (e) bind HMG;
- (f) carry out any work or activities; and
- (g) do any other thing which is incidental to or necessary for the representation of HMG;

as Ofcom considers appropriate.

3. Ofcom shall bear its own costs in relation to such representation.
4. Ofcom shall pay to the ITU the United Kingdom's Member State contributions to the ITU under Article 28 of the Constitution of the ITU. Ofcom shall also bear the United Kingdom's expenses for regional conferences which must be borne in accordance with Article 28 of the Constitution of the ITU.

Conference of European Postal and Telecommunications Administrations

5. Ofcom shall provide representation on behalf of HMG as an Administration within the meaning of Article 1 of the Arrangement establishing the Conference of European Postal and Telecommunications Administrations (the "Arrangement") as follows:

- (a) on, and at meetings of, the Electronic Communications Committee ("ECC") of the CEPT; and
- (b) on, and at meetings of, the Assembly of the Conference of European Postal and Telecommunications Administrations ("CEPT") and subordinate groups for matters which are not postal matters.

Ofcom shall not represent HMG on the European Committee for Postal Regulation ("the CERP").

6. Ofcom shall provide representation on behalf of HMG on the Council of the European Radiocommunications Office established under the Convention for the Establishment of the European Radiocommunications Office.

7. Ofcom shall, in relation to representing HMG on such institutions:

- (a) attend such meetings of the institutions;
- (b) make decisions or agree or disagree with any proposed decisions;
- (c) provide any undertakings or assurances to such institutions or to third parties;
- (d) sign agreements on behalf of HMG;
- (e) bind HMG;
- (f) carry out any work or activities; and
- (g) do any other thing which is incidental to or necessary for the representation of HMG;

as Ofcom considers appropriate.

8. Ofcom shall pay to the CEPT all contributions and bear all of the costs which HMG or its administration must contribute and bear in accordance with Article 10 of the Arrangement except for costs specifically related to postal activities.

9. Ofcom shall pay to the European Radiocommunications Office all contributions and bear all of the costs which HMG must contribute and bear in accordance with Article 12 of the Convention for the Establishment of the European Radiocommunications Office or otherwise in connection with the Convention.

European Communities: Radio Spectrum Committee and Radio Spectrum Policy Group

10. Ofcom shall provide representation on behalf of HMG on, and at meetings of:

- (a) the Radio Spectrum Policy Group established by Commission Decision of 26th July 2002 (2002/622/EC) (OJ L 198, 27.7.2002, p. 49); and

(b) the Radio Spectrum Committee established by Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (OJ L 108, 24.4.2002, p.1) (the Radio Spectrum Decision).

11. Ofcom shall, in relation to representing HMG on such institutions:

- (a) attend such meetings of the institutions;
- (b) make decisions or agree or disagree with any proposed decisions;
- (c) provide any undertakings or assurances to such institutions or to third parties;
- (d) bind HMG;
- (e) carry out any work or activities; and
- (f) do any other thing which is incidental to or necessary for the representation of HMG;

as Ofcom considers appropriate.

12. Ofcom shall bear its own costs in relation to such representation.

General provisions

13. Ofcom shall, so far as is reasonably practicable, give to the Secretary of State such notice of the things that it intends to do in providing representation in accordance with these requirements and directions as will enable the Secretary of State to give further directions in respect of those things.

Signed

For and on behalf of the Secretary of State

Date
