



Initial assessments of when to adopt self- or co-regulation

Consultation

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| | Consultation |
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Section 1

A consultation proposing an incentive-based approach to self- and co-regulation in UK communications

Background to the consultation

- 1.1 In performing its general duties under Section 3 of the Communications Act (the Act), Ofcom is required to promote and facilitate the development and use of effective forms of self-regulation according to Section 6(2) of the Act.
- 1.2 Shortly after Ofcom came into existence, a consultation was held seeking views on the criteria which Ofcom will use in promoting effective co- and self-regulation. This resulted in the publication of statement in 2004 establishing 13 different criteria to be applied by Ofcom in discharging its duties to promote and facilitate co- and self-regulation.
- 1.3 Ofcom has now had four years of experience in executing its statutory duties in this area as well as engaging with and observing a range of co- and self-regulatory schemes operating within the UK communications sector.
- 1.4 Since 2004, there has been a increasing body of knowledge in relation to the application of co- and self- outside of the communications sector and internationally.
- 1.5 This has taken place against backdrop of continuing technological and market convergence within the sector where the distinctions between broadcasting, telecommunications and information are blurring or disappearing at an increasing rate.
- 1.6 Ofcom therefore considers that it is timely to review its approach to discharging its duties in relation to promoting and facilitating appropriate forms of co- and self-regulation.
- 1.7 This consultation document proposes that a new approach be adopted by Ofcom when making initial assessments of when it might be appropriate to facilitate self- or co-regulation. Ofcom believes that such an approach should be done in a straightforward, consistent and objective manner in order to further the interests of the citizen and consumer
- 1.8 This consultation document also outlines some of the more detailed considerations that Ofcom proposes to consider after an initial assessment of the appropriateness of a co- or self-regulatory approach has been made, to design and implement a particular scheme.
- 1.9 Stakeholders are asked to respond to this consultation, answering the specific questions at Annex A and providing any additional comments that they may have. Ofcom welcomes suggestions for possible co- and self regulatory schemes within the UK communications sector.

Section 2

Regulatory Options: statutory regulation, self-regulation, co-regulation and no regulation

The impact of convergence on the communications sector

- 2.1 Convergence is reshaping our communications markets. For citizens and consumers, convergence is driving a new pattern of demand, built around three key factors: more mobility, more control and more participation in the way people use and enjoy media and communications services.
- 2.2 Convergence also means that companies are no longer operating solely in their historical markets and is leading to significant changes at every stage from creation of content and services through to delivery.
- 2.3 It is worth noting that the phenomenon of convergence is global. The communications sector now forms an important part of most economies in the developed world and communications companies increasingly compete on a global, not national, level with consumers being increasingly able to obtain services from international sources.
- 2.4 Participating fully in society increasingly requires access to communications services and an ability to use them.
- 2.5 Whilst convergence brings great advantages, such as increased choice, innovation, convenience and lower prices driven by increased competition, it can also lead to varying degrees of confusion and anxiety for consumers as the range of products and services becomes more complicated and selection becomes more difficult.
- 2.6 Within communications, people display a greater variety than before in their use of, and attitude towards services: some consumers enthusiastically embrace new technology, others used it where it was useful to them, while others feel alienated by it.
- 2.7 It is important that legislative and regulatory practices recognise these dramatic changes in the communications sector and respond accordingly.

Considering appropriate regulatory approach

- 2.8 When it is clear what type of issue needs to be addressed an assessment can be made of the likelihood that a desirable public outcome can be attained using different approaches.
- 2.9 In the UK different forms of regulation co-exist. Ofcom has identified a continuum of approaches that range from no formal government action, i.e. no intervention, through to full statutory regulation that is enforced by a state agency prescribing particular conduct according to the law.

- 2.10 Each type of approach has its advantages and disadvantages and the evidence of the last four years is that no one form of regulation can successfully regulate all the various types of behaviour and activities going on within the communications sector.

Statutory Regulation

- 2.11 Statutory regulation has its rules of engagement determined by legislation and the scope of activities subsequently can include: policy-making, which establishes the principles that should govern sectoral companies; enforcement against companies that violate policies and legislative requirement; and supervision of adjudication schemes.
- 2.12 Statutory regulation is likely to be more effective in markets where there is little competition between companies or where there is one very large player commanding significant market power that cannot be offset by the rest of industry. The regulation of access to wholesale markets where a player has significant market power (SMP) is one example that would not be effective if left to industry.
- 2.13 Similarly in a market environment where companies take a short-term view of the factors influencing their viability and are focused predominantly on the interest of their current customers and shareholders and have not invested heavily in the development of their reputations, statutory regulation is likely to play a greater role to achieve longer-term objectives.
- 2.14 Where external costs arising from the activities of companies are borne predominantly by sections of the society other than by the customers of those companies and the companies themselves, regulatory intervention is more suitable means to achieve a particularly public policy outcome.
- 2.15 In the UK, Ofcom was established under the Office of Communications Act 2002, largely in anticipation of convergence, to act as a converged regulator for the communications markets. It consolidated the functions of five previous regulators covering telecommunications, broadcasting, radio and spectrum industries, as well as taking on new powers.
- 2.16 However, a full statutory regulatory response may not always be the appropriate response for our converging sector. Instead, different structures may have to deal with the challenges faced by consumers and citizens. In a world where change has been rapid and is likely to become increasingly so, regulatory flexibility is critical.

Self-Regulation

- 2.17 We define self-regulation as when industry administers and enforces its own solution to address a particular issue without formal oversight or participation of the regulator or government. In particular, there is no *ex ante*, legal backstop in a self-regulatory scheme to act as the ultimate guarantor of enforcement.
- 2.18 However it should be clear that Ofcom is concerned with self- or co-regulation where is an alternative to statutory regulation. This current exercise does not encompass industry bodies that act as co-ordination forums, for example to improve interoperability or set standards. Therefore bodies such as the Network Interoperability Consultative Committee or NGNuk fall outside the scope of this review.

- 2.19 Similarly this consultation does not consider the role of trade associations per se, which like self-regulation schemes, are founded, organised and funded by companies within a specific industry but which, unlike self-regulatory schemes, are primarily designed to advocate the interests of their members.
- 2.20 There is a general recognition that industry self-regulation is often more flexible and less costly for both business and consumers than direct government involvement. Where there are cost advantages and/or increased flexibility in self-regulatory initiatives to address specific industry problems compared with statutory regulation or the court system, then there is a greater chance of improving market outcomes for both business and consumers, and minimising compliance costs for businesses.
- 2.21 However, it is necessary to ensure that self-regulation is the appropriate form of intervention given particular industry environment and market circumstances, otherwise inappropriate intervention could create new problems.
- 2.22 For self-regulation to be effective, there needs to be some vested interests or incentives to make it so.
- 2.23 These incentives emerge as a result of market needs and lack of legal rules to address a new set of circumstances or, the most likely case is it is in response to fear by industry that government or a regulatory will intervene in the market place curbing commercial activity and raising costs for companies. Ofcom's own research has found that most self-regulatory schemes have been established, at least in part, in response to a perceived threat of state intervention.
- 2.24 As a result, self-regulation is more likely to be effective in those markets where:
- companies recognise that their future viability depends not only on their relationship with their current customers and shareholders, but also they operate in an environment where they have to act responsibly within the societies in which they operate; and
 - companies recognise and acknowledge the identified problems which may cause harm or market failure that impede citizens or consumers; and
 - companies individually and collectively acknowledge the need to reduce the identified harm or market failure, since this will improve the ability of those companies to determine the interests of citizens or consumers and, potentially, society as a whole.
- 2.25 This is more likely to be where citizens or consumers and all other individuals share common views as to the merits of regulating the activities of companies to achieve a particular social objective.
- 2.26 A market environment with an active industry participation and/or cohesiveness is most likely to administer effective self-regulation as industry participants are more likely to commit financial resources, consult with stakeholders and monitor the effectiveness of self-regulation. Thus, self-regulation is less effective where there is a broad spread of smaller businesses that do not communicate with each other and have little resources to commit.

- 2.27 Part of the work of the Internet Watch Foundation is an example of successful self-regulation, with the objective is to minimise the availability of potentially illegal internet content, specifically:
- Child abuse images hosted anywhere in the world;
 - Criminally obscene content hosted in the UK; and
 - Incitement to racial hatred content hosted in the UK.
- 2.28 It operates an internet 'Hotline' for the public and IT professionals to report their exposure to potentially illegal content online, and a database of prohibited websites is then distributed to members.
- 2.29 In 1997, the first year the IWF came into operation, 18% of the potentially illegal content assessed by the IWF - almost exclusively child abuse images - was hosted in the UK. At the end of 2005, that figure fell to 0.4%.
- 2.30 The success of the IWF has been attributed to:
- Tough laws that prohibit any form of possession or distribution of child abuse images with strong sanctions for transgression.
 - A sophisticated system to transfer intelligence and information from the IWF to the Police for them to investigate.
 - A committed and effective Internet Content Service Provider community who remove any potentially illegal content found on their services immediately when notified.
 - An informed public who report online if they are exposed to potentially illegal online content.
 - Continued support of IWF by a diverse range of industry funding members.
- 2.31 The success of the IWF is also due to its focused remit. Were this to be extended to other content regulation (e.g. hardcore pornography) it is not clear whether the incentives would be as well aligned.
- 2.32 Ofcom has also received initial feedback that the UK's nascent, independent mobile classification body, the IMCB, that set a classification framework for commercial mobile picture-based content is an example of effective self-regulation, achieving its aims that standards are equivalent to those of other media such as film, video and computer games. However, Ofcom would welcome other examples of self-regulatory schemes that stakeholders consider to be models of success.

Co-Regulation

- 2.33 We define co-regulation as an extension of self-regulation that involves both industry and the government (or regulator) administering and enforcing a solution in a variety of combinations. Thus the aim is to harness the benefits of self-regulation in

circumstances where some oversight by Ofcom may still be required. This is best illustrated with examples of co-regulation.

- 2.34 The Broadcast Committee of Advertising Practice (BCAP) is a scheme aimed at maintaining standards in advertising, particularly with regard to misleading or unsubstantiated claims and offensive material. It is currently delegated to the industry in the form of co-regulation (for broadcast advertising).
- 2.35 The BCAP is designed to inform advertisers and broadcasters of the standards expected in television advertising. It is based on enduring principles; that advertising should not mislead, cause deep or widespread offence or lead to harm, particularly to the vulnerable. It is the responsibility of the broadcasters themselves to ensure the advertising they transmit complies with both the spirit and the letter of the Code.
- 2.36 In May 2004, Ofcom established a new 'one-stop shop' for all advertising standards and complaints, with the transfer of key elements of advertising regulation from Ofcom to the following new legal entities within the Advertising Standards Authority for broadcasting (ASA):
- ASA (Broadcast) – an independent body which investigates advertising complaints against the Advertising Code.
 - BCAP (Broadcast Committee of Advertising Practice) – an industry committee which has ownership of (and the power to change) the advertising code.
 - BASBOF (Broadcast Advertising Standards Board Of Finance) – body that controls the funding of the ASA(B) and BCAP.
- 2.37 In relation to broadcast advertising, compliance with the broadcast codes (TV and radio) is a condition of licence for the broadcasters.
- 2.38 This has been a high profile scheme which Ofcom, the ASA and industry have been keen to demonstrate that it works and have put the sufficient resources to ensure its success.
- 2.39 There is extensive monitoring and measurement in terms of Key Performance Indications (KPIs) to measure its standards of service through in terms of its accessibility, its responsiveness, its effectiveness, quality and transparency. The KPIs were changed in June 2006 as a result of discussions with Ofcom to achieve consistency between broadcast and non-broadcast campaigns.
- 2.40 A significant issue has been how to ensure that BCAP has sufficient motivation to enforce rules which may be controversial and unwelcome within industry such as food advertising.
- 2.41 Another successful example of co-regulation is the Dutch *NICAM (Nederlands Instituut voor de Classificatie van Audiovisuele Media)* audiovisual media classification NICAM is widely known, adopted and respected, which contributes to its success. More than 2,200 companies and organisations are affiliated to it, either through their sector organisations or directly to NICAM. Ofcom considers that the high number of complaints it receives is testament to its success rather than failure. That is, the complaints reflect the high-level of public awareness which in itself is to be welcomed.

- 2.42 The Department of Culture, Media and Sport (DCMS) is the government department responsible for the implementation of the Audiovisual Media Services (AVMS) Directives. As part of the implementation process, DCMS will be consulting on various options for the regulation of video on demand (VOD) but before doing so, DCMS together with Ofcom, is in the process of holding a series of 'issues groups' meetings with key stakeholders to inform the consultation process, including options for co-regulation afforded by the new Directive.

No Regulation

- 2.43 Discussions around the appropriate response to protecting the interests of citizens and consumers sometimes imply that some form of regulation will be required.
- 2.44 However Ofcom operates with a bias against intervention recognising that its markets that are most effective means of delivering efficient outcomes to consumers and, of equal importance, that any form of regulation can potentially impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation.
- 2.45 In addition Ofcom believes that it is important that a model of shared responsibility is developed that gives people the tools they need to take personal responsibility and which supports effective means of different type pf regulation whether it is self-, co- or statutory regulation. In our convergent world, the growing importance of online media literacy derives from this: media-literate parents and children, equipped to take on this personal responsibility, provide a significant means of protection in themselves.
- 2.46 Even where market failure is identified and a full statutory regulatory remedy will be sought, impact assessments form a key part of our policy-making, reflecting our statutory duty to carry them out. They provide a way of considering different options for regulation and then selecting the best option. In selecting and analysing options, the need to further the interests of citizens and consumers is of paramount importance.
- 2.47 Ultimately the analysis of whether self-regulation or co-regulation is appropriate must be on a case-by-case basis. In some circumstances, the way in which a scheme is designed and implemented may overcome inherent handicaps in industry structure or market circumstances. These issues are covered in subsequent sections below.

The UK Communications Sector Regulatory Landscape

- 2.48 A converged world may need different structures to deal with the challenges for consumers and citizens. In a world where change has been rapid and is likely to become increasingly so, legislative and regulatory flexibility is critical.
- 2.49 Some of this flexibility is built into the existing Communications Act, 2003. Specifically the regulation of premium rate services where an industry code is required, Ofcom creates the framework through its role in recognising the code, approving the *PhonePayPlus* (formerly *ICSTIS*) budget and supporting activity plan and by providing backstop powers for the enforcement regime through the PRS Condition under section 120 of the Act.
- 2.50 Similarly, alternative dispute resolution schemes are recognised as cost-effective alternatives to litigation and Section 54 of the Communications Act provides that

Ofcom, in consultation with the Secretary of State, may approve dispute procedures, currently CISAS and OTELO.

- 2.51 However, Ofcom also has a duty to promote and facilitate the development and use of effective forms of self-regulation according to Section 6(2) of the Act. One example of such promotion was contracting out of Ofcom's functions to the Broadcasting Committee of Advertising Practice (BCAP). This was undertaken under the Deregulation and Contracting Out Act 1994 and Section 1 (7) of the Communications Act.
- 2.52 In addition there a number of self-regulatory organisations in existence within the UK Communications Sector some of which Ofcom has no formal supervisory role such as the Internet Watch Foundation (IWF) or the Independent Mobile Classification (IMCB).
- 2.53 Self-regulation is more likely to be effective in a competitive market as industry participants are more likely to be committed to it, either to differentiate their products, or in fear of losing market share.
- 2.54 A more mature industry may be able to administer more effective self-regulation, as industry participants are more likely to have sufficient resources and be more committed while any `shakeout' of rogue traders will already have occurred.
- 2.55 Nonetheless, Ofcom believes that the findings of its co- and self-regulatory project should be incorporated into new internal guidelines for Ofcom managers to follow.

Section 3

Making an initial assessment whether to apply self- or co- regulation: an incentives-based approach

- 3.1 When Ofcom was formed, it was given a specific mandate to promote self-regulatory solutions, with an expectation that this could achieve better regulation. Ofcom continues to believe that different forms of co- and self-regulation have a useful role to play as a means of achieving policy outcomes more effectively by incentivising industry to cooperate through greater engagement and offering more flexibility and targeting specific issues.
- 3.2 In order to fulfil this mandate, Ofcom considers that it is important to identify the environment and circumstances that are more likely to lead to effective self- or co-regulation.
- 3.3 Much of the academic literature and public consultations concerning different co- and self-regulatory schemes have tended to focus on the detailed institutional design and criteria that might be applied. Indeed that this approach was reflected Ofcom in first set of co- and self-regulatory criteria.
- 3.4 Such criteria remain important today. However they are not suitable to make an initial determination of when self- or co-regulation may be an appropriate means to discharge particular duties or to achieve the outcomes in the interests of citizens and consumers.
- 3.5 This is because such an assessment requires an examination of the underlying market conditions and the interests of market players in addressing publicly desirable goals. Specifically, Ofcom considers that a self-regulatory scheme is more likely to succeed if the private incentives of companies to maximise profits and return these to shareholders are aligned with companies' public commitments to protect citizens and consumers from harm.
- 3.6 It should be borne in mind however that even if incentives are not perfectly aligned, self-regulation can still work if certain conditions are met. First, it should be possible to determine clearly that a company has fallen short of its promises. Therefore there needs to be clarity about the nature of the promise and whether it has been met. Second, there needs to be an incentive on the companies meeting the promise to inform on rogue companies.
- 3.7 There may be a number of reasons why this incentive is weak, including the collective incentive to under-deliver, given the likely profitability of that strategy. Given the above, and because in most cases incentives are unlikely to be fully aligned, some form of co-regulatory solution with formal back-stop or approval powers resting with Ofcom is likely to be required.
- 3.8 Ofcom proposes that the following steps be taken when making an initial assessment of whether a form of self- or co-regulation might be a suitable solution to achieve a particular policy outcome in the interests of UK citizens and consumers:

STEP 1 - Collective industry incentives to participate. Consider whether companies that are expected to take part in a scheme have a collective incentive in solving a concern. If they do not then the likelihood of a purely self-regulatory solution succeeding is far less likely.

STEP 2 - Delivery of benefits to the citizens and consumer. If there is collective consensus, then the next step would be to consider whether the solution proposed by industry is likely to address the concern at hand to the best interests of UK citizens and consumers. Such an assessment should be made using existing regulatory impact assessment guidelines to determine whether intervention by Ofcom would produce any better results. However a co-regulatory solution might also be appropriate to garner the expertise of industry or because the solution would benefit from a more timely consumer-facing approach than Ofcom investigating and responding to complaints in relation to the issue.

STEP 3 - Would individual companies have an incentive not to participate in any agreed scheme? In such cases consideration should be given to the extent of the number of companies likely to opt out and identification of the difference it would make to the likelihood to the scheme if they failed to participate. Again, widespread opt-out would not point to the likely success of a co- or self- regulatory approach. However, if only a small number of companies failed to participate, Ofcom could consider what measures could be taken to ensure public awareness of the benefits of contracting with communication providers who were members of such a scheme and what enforcement action might be taken where public harm was likely to occur, including compulsion to join a co-regulatory scheme.

STEP 4 - Free-rider issues. Even where most or all of the relevant communications providers joined a particular scheme, consideration should be given to the incentives for member companies to cheat, the extent to which this would be detrimental to citizens and consumers and what monitoring and enforcement measures could be placed against those companies found in breach. In other words, where public interest incentives and private commercial incentives are least aligned there is more of an incentive to cheat and consideration should be given to what punishment mechanisms can be put in place.

STEP 5 - Clarity and simplicity. A scheme is more likely to be effective where companies can readily sign-up to the objectives (i.e. they have the incentive to comply) and it is relatively straightforward to understand what the purpose of the scheme and its rules are. Therefore, the final consideration in determining the suitability of self- or a particular self-regulatory solution is the extent to which:

- there may have more complex objectives of diverse value to consumers
- whether the membership of companies is diverse and
- where compliance with particular objectives may adversely impact on the profitability of some members more than others.

Section 4

Subsequent factors in implementing co- or self-regulation

Criteria to consider following decision to adopt a form of co- or self-regulation

- 4.1 After an initial assessment has been made of whether self-regulation or some form of co-regulation is desirable and appropriate to address a particular issue in the UK communications sector, further work will be required to ensure effective and efficient administration of the scheme.
- 4.2 Ofcom's experience as well as evidence from the running of schemes outside the sector and internationally indicates that there are a number of core criteria that are important to the performance of the majority of schemes. The weighting of each factor may vary depending on the objectives of the scheme in question.
- 4.3 As part of our analysis, we have identified the following criteria to consider when establishing any new co- or self-regulatory scheme in the UK communications sector:
 - a) **Public awareness and visibility of schemes:** Scheme objectives, particularly in relation to information provision or consumer protection, are unlikely to be met, and incentives to members to participate will be weakened, if consumers and citizens are not made aware of their existence and their remit by active promotion.
 - b) **Transparency:** The adoption of a scheme in place of statutory regulation, and confidence in its ability to deliver on objectives, will be dependent on maintaining stakeholder confidence. This will require openness and transparency in operation and a degree of public accountability about performance. As a minimum this should include publishing annual reports – with an element of objective review - on the scheme's progress. Schemes' procedures should also be open, transparent, easy and generally free of charge to use. Effective arrangements for wide public consultation on significant issues is desirable.
 - c) **Significant number of industry are members:** The private commercial incentives of companies may either conflict with the public interest, or may lead an individual company to free-ride on the reputation created by other members. To have an effective impact, a scheme should represent a very high proportion of traders in the market place, or traders representing the vast majority of consumers. It will then be in a position to influence and act independently of individual members, to ensure that its influence extends across the industry and also allow identification of companies who are not bound by the scheme. It also is desirable that citizens and consumers are then able to differentiate between companies which are, and those companies which are not, members of a particular scheme.
 - d) **Proportionate cost:** In some cases, the direct costs of funding a bespoke scheme may not be outweighed by common or evenly distributed benefits to members. Industry members must ensure there are adequate resources to

operate the scheme effectively, and that this is commensurate with the scale of the industry that it is imposed on. Staff resources would need to be sufficient to cope with the volume and type of work which is likely to arise. The operation of the scheme should dictate proportionate costs, rather than vice versa.

- e) **Enforcement measures:** In many industries, individual companies will have incentives to cheat on individual obligations and the scheme's effectiveness will depend on punishment mechanisms. Schemes need to have sanctions that provide a clear incentive to comply, and which can be imposed promptly and successfully. To administer this, the disclosure and transparency of information from members is essential if participants are to monitor the health of these schemes. Where applicable, it is also important to disclose what penalties can be imposed and whether they have been imposed for identified breaches. Some forms of sanction may necessitate Ofcom exercising specific statutory powers. The co-regulatory body should be able to identify circumstances and pro-actively recommend where it would be more appropriate for Ofcom to use back-stop powers.
- f) **Audit of members and scheme:** Insufficient governance and administration of a scheme will prevent its benefits being widely realised. Schemes must be active in setting and auditing KPIs of members to ensure that these are met individually and consistently across the industry. Similarly, relevant KPIs for the scheme itself in meeting its objectives should be identified. Where KPIs have been set, they should be published and regularly reviewed in the light of changing circumstances and expectations.
- g) **System of redress in place:** In some cases companies may under-deliver or fall short on promises. Consumers and citizens should have the right to adequate complaint handling standards where they have been dissatisfied by the initial response of a provider. It is desirable for there to be a genuinely independent appeals mechanism that can ensure that complaints are resolved quickly and effectively, and their outcome disclosed. An effective scheme will have an alternative redress mechanism such as independent arbitration, or an ombudsman scheme, which is easy to access and readily identifiable at the point of need and has even-handed and transparent procedures.
- h) **Involvement of independent members:** There is a clear tension between the desirability of autonomous schemes and the objectives of drawing on the experience, expertise, resources and engagement of the industry within them. The benefits of self-regulation may only be realised if the scheme is respected by other stakeholders including consumer and citizen groups, government and parliamentarians. Consequently a system involving a mixture of independent lay and industry members will be appropriate in both the scheme's governing body and further operating committees.
- i) **Pro-active and planning in research and regulation:** Schemes are often introduced for particular objectives which may be overtaken by changes in the market or the expectations of stakeholders. Schemes should actively review the needs of stakeholders and trends in the industry, and monitor whether their remit and operations are sufficient to meet these.
- j) **Non-collusive behaviour.** Finally, it is important that any scheme does not provide a forum for collusion and is compliant with both European and UK competition law. Again sufficient transparency and approval will have to be built

into the design of any solution to demonstrate to third parties that industry members are committed to non-collusive behaviour and are agree to comply with the relevant codes.

- 4.4 Not all of the above criteria are applicable in equal measure to all schemes. There may be specific instances where a criterion will be more appropriate depending on the scheme's objectives and the degree of alignment of these with private company incentives. For example, a scheme that is intended to facilitate consumer choice in a highly competitive industry with high customer churn may require more focus on public awareness and less on enforcement measures. Similarly, for a scheme focused on improving industry co-ordination and standards it may be more appropriate to focus on an audit of members rather than a system of redress
- 4.5 Across all schemes, however, suitable funding, involvement of independent members in decision making and transparency for both members and external stakeholders seem a given for operational effectiveness since self-regulation does not the same goal as, say as trade association, to simply promote the interests of industry members. A scheme is unlikely to be able to accomplish its objectives, or do so with any confidence, if it is poorly resourced or judged to promote the interests of industry before consumers.

Clear division of responsibilities

- 4.6 It is essential that there is a clear division of responsibilities between the co-regulatory body and Ofcom. It should be clear to all concerned, including consumers, who is responsible for which area, and what the precise role of Ofcom is.
- 4.7 In order to provide clarity about remit and responsibilities it may be appropriate to agree and publish terms of reference or a memorandum of understanding. Such a document could also address the issue of the body's independence from Ofcom.
- 4.8 In general terms, Ofcom would serve as an enabler and evaluator but would not have responsibility for, nor powers to, second-guess individual decisions of the co-regulatory body. Ofcom would approve the co-regulatory body's governance and funding arrangements, and any significant modifications to them. Ofcom would expect to approve any codes and/or guidelines which the co-regulatory body publishes. Ofcom would also need to have an ability to make directions where it came under a specific legal obligation.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on Friday 6 June 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/coregulation/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email tom.kiedrowski@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Tom Kiedrowski
Floor 06:19
Strategy & Market Developments Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3706
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Tom Kiedrowski on 020 7981 3747.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in July 2008.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

A4.1 Ofcom welcomes stakeholder responses to the following specific questions:

Q1. Do you agree that there is a need for Ofcom to have straightforward means of making an initial assessment of when to adopt a self- or co-regulatory approach rather than rely solely on its powers as a statutory regulator?

Q2. Do you believe that it is possible to define a set of objective criteria for determining co- and self-regulation?

Q3. Do you agree with Ofcom's proposed incentives-based approach to co- and self-regulation?

Q4. Do you agree with the subsequent factors Ofcom is proposing to consider for the institutional design of self- or co-regulatory schemes?

Q5. Do you have suggestions for possible co- and self regulatory schemes within the UK Communications sector?