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Response by the Communications Management Association (CMA) to Ofcom's Draft Annual Plan, 2012-2013

Summary

CMA expresses three main concerns in this response:

The lack of recognition that the needs of the business consumer require a regulatory approach that differs significantly from that applied to the needs of the citizen-consumer.

The omission of any reference to the need for a thorough review of the Undertakings to ensure fitness for purpose in the fibre era.

The need for national roaming between domestic MNOs

Business Users

The recent version of the Annual Plan contained a sub-heading dedicated to regulatory activity around the provision of services to the business consumer. The rationale for this was explained as being a consequence of Ofcom's work on the Business Communications Market Review. However, the draft plan for 2012 contains no such dedicated section, despite the intention to produce a follow-on BCMR later in the year.

The impact of this omission is significant and renders the draft incomplete.

Paragraph 1.3 reads: *"Ofcom's principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. Therefore, the needs of consumers and citizens are at the heart of our programme of work."*

This paragraph and the seven succeeding it refer repeatedly to the "citizen-consumer" and the "consumer". It is not until paragraph 2.2 that there is any reference to business consumers. Even then, the remainder of Section 2 is solely concerned with reports on the domestic consumer market.

The context of Section 1 is important. It sets the scene and grooms expectations. Probably in consequence, the content of Section 2 is heavily distorted. There is a clear inference that Ofcom has reverted to addressing only the needs of citizens and domestic consumers.

Ofcom's CEO gave evidence at the DCMS Select Committee in November, where he was very clear on this issue. The relevant quotation is (taken from <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcomeds/1258/110705.htm>):

A36.1 Q304 Chair: *Finally, it was suggested to us that the remit under which Ofcom operates, which is very much consumer focused, means that you are sometimes not able to take sufficient account of the need to help support British business. The*

Minister suggested earlier that there might be a case for changing Ofcom's remit to take account of that when we come to the forthcoming communications legislation. Do you feel that your remit should be widened?

A36.2

A36.3 *Ed Richards: There is bound to be a case for it; there is no doubt about that. It is a kind of argument and debate that we do expect to see take place in the run-up to the next Communications Act, so I would certainly not be remotely uncomfortable with that debate taking place. We do not feel discomfort at the moment with our duties at all. We are very conscious of the business sector and the needs of businesses to ensure that they can invest successfully and make a return and provide competitive services to consumers. So it certainly is not the case that we do not take account of business needs. Whether our duties need to be adjusted to guide us to take more account of business as a voice or of particular businesses, will ultimately be a matter for Parliament. This question often comes up when we are dealing with some of the international questions because then you are in a nation-versus-nation, company-versus-company negotiation. So that is where we tend to see it. In many respects, particularly in terms of international negotiations and so on, we act on guidance; we act essentially on behalf of the Government and we do that in the international negotiations so that we can use our technical expertise, but under guidance from the Government. If that turns out to be the main area of concern, it is possible that the Government can modify their framework or their guidance to us. In relation to more domestic business, I would be mildly concerned about any significant move away from the general principles of focusing on the interests of consumers and citizens and promoting competition.*

In light of repeated claims from the Chairman downwards that Ofcom's use of the word "consumers" includes business consumers, it would have been reassuring to see this understanding confirmed in the text of Section 1. As it is, the existing wording is not acceptable to CMA. We have made the point very many times over the years that regulating for the consumer is not the equivalent of regulating for the business consumer.

The Undertakings

The functional separation of BT, supported by statutory undertakings, gave a very real boost to effective competition. However, it was a product of the copper era and we are now well into a completely different technological cycle based on fibre. It is doubtful that the Undertakings can remain fit for purpose for much longer and there is some evidence that current decisions are being distorted to fit yesterday's framework. One example is BT's reluctance to supply dark fibre, despite a clear need and growing demand.

In similar vein, we would have preferred to see the next version of the BCMR produced rather earlier than next September and we suspect that the lack of a sound foundation for policy-making in the fibre environment cannot have helped.

Fig 12 has a most welcome target, or "outcome", relating to sustained choice and innovation in the fixed telecoms market. But this is not supported by adequate references elsewhere in the draft. We are becoming increasingly concerned that both government and regulator are preparing to abandon any pretence at infrastructure competition and are accepting that a quasi-monopoly is the only remedy for the lack of universal access to real broadband.

National Roaming

Paragraph 4.35 reads: *"Ofcom produces extensive research covering communications services used by citizens and consumers. Experiences of those services vary between the*

four nations of the UK, with residential households and small businesses in rural communities facing particular challenges, such as poor mobile coverage in some areas.”

It is not just domestic users and small businesses that suffer from poor coverage – enterprises of all sizes need much better coverage than the industry seems willing to provide. We reiterate our request that Ofcom mandates national roaming as a partial solution to this apparently intractable problem.

CMA would be grateful if:

A separate sub-heading “Business Consumers” could be included in the final version of the Annual Plan for 2012. The sub-heading should address the needs of businesses and give substance to the strategic priority of Fig 12;

Ofcom would give a clear indication that it is considering a review of the Undertakings and, in the meantime, affirms its intention to apply the existing Undertakings to the maximum extent possible;

Ofcom would provide a formal statement on its approach to national roaming and include such work in its Annual Plan.

Michael Rowbory
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