Ed Leighton, Ofcom
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Dear Ed

OFCOM DRAFT ANNUAL PLAN 2011/12

Modern Communications welcomes the opportunity to comment on the draft version of the Ofcom annual plan for the year 2011/12.

It is important that Ofcom should focus at all levels on maintaining a high quality and reasonable process of regulation which meets the statutory principles of good regulatory practice and contributes more generally to a real and sustainable reduction in the burdens faced by British industry. A willingness to be receptive to regulated companies' comments on key strategic documents while they are still in draft should contribute significantly to that process.

Effective competition continues to remain a valid theme within our industry and we welcome any Ofcom initiatives that will genuinely further improve the customer experience. In this context, we believe that two areas in particular will call for a much more positive and vigorous approach by Ofcom over the forthcoming plan period.

The first such area is the customer performance and service delivery of Openreach, where the outcomes are too often erratic and sometimes wholly unacceptable. We were pleased to see these issues being well addressed in the recent letter of complaint sent from the Federation of Communication Services (FCS) to Openreach, which was copied to Ofcom. This is an area in which Ofcom's self-proclaimed bias against intervention is simply not appropriate. Rigorous and independent external monitoring of Openreach's performance is required, supported by prompt enforcement action where continuing systemic failure to improve is detected.

The second such area is the need for a more effective industry-wide process to deliver real and sustainable improvement of the ease of switching between communications providers. We recognise and support Ofcom's focus on the key outcomes of ensuring (1) that the consumer experience of switching is easy and convenient, and (2) that switching processes do not get in the way of providers competing to deliver benefits to all consumers. However, securing those specific outcomes for the future against the background of the current patchwork quilt of different processes, of variable quality and complexity, will require rather more intellectual energy and resource commitment than Ofcom has shown so far.

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Our own view is that a really effective, end-to-end switching process between communications providers that delivers a high-quality customer experience in all cases will require, ultimately, a set of market rules embedded in a multi-lateral operating code to which all industry participants are required to accede. This would be administered, enforced, and from time to time amended under a strong and transparent self-governance regime, subject only to regulatory oversight by Ofcom. We urge Ofcom to work with industry representatives towards that end.

The relatively light-touch approach that Ofcom seems to have adopted in relation to the above two areas is indicative of a wider lack of strategic focus in the draft plan. Indeed, a regulator that sets out 19 priorities for the next 12 months (see page 6) could be said to be a regulator that has no priorities at all. We are, of course, pleased to see evidence of Ofcom responding not just to the industry's long-standing concern about the level of its regulator's costs but, more significantly, to the overriding pressure for Ofcom as a public sector body to meet the current public spending challenge. Even in this area, however, the lack of detail is marked.

In particular, given that most of the savings needed to deliver a real terms reduction of 28 per cent by the end of 2014/15 in Ofcom's current funding cap of £143 million are to be made during the coming financial year, it is little short of astonishing that the draft plan contains no budget for Ofcom's activities in 2011/12, disaggregated by major work area, and no outline financial projections, similarly disaggregated, for each of the following three years. These are fundamental omissions, given the magnitude of the likely spend involved.

At its public meeting held at Riverside House last month about the draft plan, Ofcom seemed to suggest that any extra financial information that could be made available would appear only in the final plan. That is not helpful. It would be good practice to provide such information, in future, at the consultation stage when there is still time for it to affect responses to the draft.

We note the increased emphasis in this year's plan on Ofcom's cost control and organisational effectiveness. However, to judge from the contents of the plan, there is clearly still a long way to go before Ofcom can claim to be a regulatory body whose whole attention is fully focused on a smaller number of major work items. Ofcom remains a very busy regulator, with little apparent ability to prioritise its activities and withdraw from less important work.

We request Ofcom to take account of these comments in settling its strategy, so that Modern Communications can be confident that the industry's regulator will be moving forward on the right tracks, and that this will be evidenced in the published plan.

Yours sincerely

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