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Dear Ed

Ofcom's Draft Annual Plan 2011/12

I set out below SSE's response to Ofcom's recent consultation on its draft annual plan for 2010/11.

We make some comments under three of Ofcom's strategic purposes for 2011/12 and then set out some additional comments.

Helping Communications Markets to work for customers
Ofcom has rearranged the headings of its proposed work areas in the current draft annual plan compared to last year and refers to this as strategic purpose 3 but we continue to believe that work under this heading is the most important area for Ofcom to focus on strategically. We agree with most of the list of market failures that Ofcom has identified in paragraph 3.9 i.e.

- Limited incentives for switching processes;
- Complex products and pricing; and
- High barriers for consumers seeking to leave their existing providers.

It is notable that all of these can, to some extent, be addressed by the development of switching processes that are easy for customers to use to move to suppliers who provide them with attractive and readily comprehensible products. We therefore continue to support Ofcom's priority on improving the ease of customer switching between communication providers (CPs), as we have done in response to many draft annual plans up to now. In this context, we believe that Ofcom should look at what is needed across the retail markets as a whole: with increasing convergence of technologies (e.g. fixed and mobile telephony), sub-optimal solutions may develop if particular market segments are reviewed in isolation.

We have also engaged with Ofcom's Switching Working Group and sub-groups and hope that Ofcom will recognise the benefits of a degree of coordination between CPs to achieve outcomes in this area that will benefit customers and competition. In particular, we advocate that the template switching process developed should be gaining provider led, as is the case in most other markets. The opportunity should also be taken to develop an industry database to allow unambiguous identification of the premises and services to be involved in a particular change of supplier. The development of a database will provide a base on which changes in the technology of service delivery – for example, the adoption of fibre rather than copper – can be encoded, thus future-proofing the migration systems and safe-guarding the experience of customers moving between technologies. It is also the case that newly developed fibre networks are looking to Ofcom to provide them with a means of allowing customers on their networks to migrate between different services – and the approach we have advocated would also cater for this.

We are also aware that Ofcom's work on automatic renewable contracts has been ongoing for some time and note the concerns that Ofcom has raised about these. We agree that there may be harm to competition where such contracts are used in conjunction with further minimum contract periods entailing early termination charges. It is possible that the existence of these has also contributed to the drop in switching rates since 2008 to which Ofcom refers in paragraph 2.18 and we look forward to Ofcom's promised documents on this subject.

Promoting effective and sustainable competition

Of the two priorities that Ofcom put forward under this strategic purpose, we are most concerned with that relating to the delivery of superfast broadband. We have engaged in the various consultations in recent years about the development of regulation for next generation access. Since the last annual plan was published Ofcom has completed the Wholesale Local Access review and we were disappointed to see that no wholesale product has been mandated to support equivalence of inputs at an active reseller level, akin to the current regulated product of wholesale line rental.

As Ofcom describes in paragraphs 5.7-10 of the document, a more passive local access product (VULA) has been mandated but we believe that this form of wholesale access will not support the variety of competition – including from resellers – that exists in the market today. This is because it can only be used by the small number of vertically integrated CPs that provide service in the market as distinct from the hundreds of small suppliers who base their current service provision on the availability of an active level wholesale product for telephony. Even the vertically integrated CPs make use of an active product in areas where they have not rolled out their own infrastructure so such a wholesale product would have wide application and be able to support a smooth transition in "effective and sustainable competition" from the copper technology platform to the new fibre-based one.

Ofcom makes reference to the implementation of the new provisions in the European Communications Framework on infrastructure sharing. We would hope that these could be interpreted to facilitate an active level of infrastructure sharing, as this would appear to make the most sustainable use of whichever superfast access infrastructure is first rolled out to a particular area. It also appears to line up with the Government's aspiration, set out in its superfast broadband future document, for any CP to be able to provide services over any access network through appropriate interconnection arrangements.

Promoting the efficient use of public assets

Much of the work under this strategic purpose relates to spectrum issues and developments. SSE is a user of spectrum assignments to support its core business of energy provision and our only comment here is to urge Ofcom to take into account the use made of spectrum to secure the performance and safety of much of the Critical National Infrastructure in the UK, when it develops its policies in this area.

We do also agree with Ofcom's inclusion of the efficient and effective allocation of geographic telephone number ranges under this heading. This area appears to be one where industry could be given more autonomy to develop numbering arrangements (both geographic and non-geographic) through use of a co-regulatory body. This could reduce Ofcom's day-to-day involvement and administration in this area and empower the industry to sort out issues with numbers between the various interested parties without reducing Ofcom's input and control over the direction of policy.

Additional Points

- Digital Economy Act Reporting Duty
  We note that the new reporting duty is referred to at paragraphs 6.70-71 of the consultation. However, we do not see that the point is made clearly that the production of two reports is now a statutory requirement on Ofcom – one on infrastructure matters and one on the services available over that infrastructure. These are two distinct matters for policy making and, while the reports may be presented in one document, we advocate that they are maintained as clearly separate reports. In a number of areas of Ofcom's work the distinction between the regulation appropriate to infrastructure providers and that appropriate for suppliers of services over that infrastructure is important – for example, their different roles in the development of improved consumer switching arrangements discussed above. We urge Ofcom to use the opportunity of the requirement for two reports to separate clearly the issues and factors around communications infrastructure from points that could be made about the availability and quality of services provided over that infrastructure.

- Co-regulatory opportunities
  Under Strategic Purpose 4 on audiences and standards, Ofcom refers to three of the co-regulatory bodies it works with in this area. In the current draft annual plan, paragraph 8.12-13 explains how Ofcom considers co-regulatory options in every project it carries out. We are not aware of any new co-regulatory bodies being considered in the "networks and services" area of Ofcom's work and would like to see this highlighted in future annual planning documents and projects.

- Ofcom website
  Ofcom's case studies of simplification initiatives refer to the recent overhaul of Ofcom's website. One comment we would make is that the website has lost the capability of listing open consultations ordered by the date that they close – which was a useful tool for Ofcom's stakeholders who aim to respond to relevant consultations. Also, it does not yet seem possible to list documents published in 2011 using the "find a consultation" search function.

I hope these comments are helpful as Ofcom finalises its plans and priorities for 2011/12.

Yours sincerely

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