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Dear Jakub

Ofcom's draft Annual Plan 2010/11

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

We consider Ofcom's proposed priorities and work programme under the three headings used in the consultation document then make some additional points.

Consumer and Citizen

We fully support Ofcom's priority, under this heading, to make progress in the area of switching procedures. All the areas mentioned in the work programme under this heading are valid and we look forward to further concrete results from this programme of work that has featured in Ofcom's annual plan over a number of years. There are clearly direct benefits for customers when the processes for switching between different product options are easy to use and yield a positive customer experience. However, there are also indirect benefits for customers, as discussed under the Competition heading below, since such a framework also supports a wide variety of different and innovative suppliers offering a choice of products and services.

We note the relevance of other planned areas of work and review for Ofcom under this heading - in relation to the universal service obligation; products and services available for disabled users; the information available to customers on quality of service; and on whether any further changes to regulation are needed with respect to avoiding mis-selling of fixed-line voice services. In these areas, we would caution against the development of detailed prescriptive regulation that could bring additional costs and compliance risk to suppliers. In particular, there has recently been a change to the regulation around avoiding mis-selling of fixed-line voice services and we advocate that the new rules, coupled with any practical improvements that can be generated through the work on customer switching processes, should be allowed to bed in before further measures are contemplated.

Competition

As a relatively new entrant to the retail communications market, Ofcom's work to develop and maintain competition in the sector is very important to SSE. We therefore fully support Ofcom's priority on implementing regulation to support both competition and investment in super-fast broadband or "next generation access" (NGA). With the NGA infrastructure investments already planned, it will not be long before the reality of NGA infrastructure links to premises, along with the possibility of new services able to be provided over those links, will be with us.

While we support the set of principles that Ofcom developed for NGA earlier in 2009, we believe that much needs to be done to develop a common understanding across industry of how different types of communication provider (CP) can interact and deliver services over the new infrastructure in a manner that preserves competition and customer choice. These areas are being considered by various groups in the industry and we believe that Ofcom should take more of a role in coordinating the evolution of a unified approach to market development. We think it would be worth, for example, developing this coordination need as a project and consulting industry about it. The risk, if this coordination does not occur, is that the market will develop piecemeal with "islands" of differentiated technologies which capture customers and restrict their choice of services at the outset of a newly developing market in NGA services.

There is also a concern about the development of wholesale services to support the transition of today's voice and data services to the new NGA infrastructures – for example, as customers move house. The principles that underpinned the development of wholesale line rental (WLR) as a regulated wholesale product on the BT Openreach networks should also apply to the development of the logically successor products on the new infrastructures. Proposed developments, particularly with respect to commercial arrangements, should be able to be discussed in an open and transparent manner so that all interested parties have an opportunity to comment, rather than these areas being determined by a few market participants. We believe this area should be an important initial focus for the project proposed above on coordinating NGA developments.

It is also worth noting that Ofcom's work on customer switching, discussed above under the "Consumer and Citizen" area of work, is also very important for the health of competition in the market. Unless potential suppliers are confident that customers can easily switch to their products and services, they will be unwilling to invest in bringing such services to the market, to the general detriment of customer choice.

Within the proposed ongoing work areas, we are particularly interested in the areas of BT pension costs and regulatory reporting. Particularly for Openreach, we believe that the treatment of pension costs should be more aligned with that of other utility infrastructures but also that its accounting separation and regulatory reporting should be similarly aligned and tightened up.

Infrastructure and Spectrum

We believe the most significant item that Ofcom has listed under its ongoing work in this area is that of "understanding network capabilities". We agree with Ofcom that,

while the proposed changes to Ofcom's duties in the Digital Economy Bill currently include a requirement to report on various aspects of communications infrastructure in the UK, its existing duties give Ofcom some responsibilities in this area in any case. With communications infrastructure coming to be seen as a "digital utility", we believe the time is right for Ofcom to develop a comprehensive overview of how that infrastructure operates and its capabilities, as well as to re-think the type of regulation appropriate for that infrastructure.

As discussed in relation to regulatory reporting in the previous section, we consider that the regulation of Openreach – as the chief communications "utility infrastructure" – could readily follow the pattern of utility infrastructure in other sectors such as energy and water.

In our view, the areas appropriate to consider in that context include requirements to:

- Develop and maintain technical, operational and commercial standards;
- Promote inter-operability and the ability of alternatively provided new infrastructure to inter-connect with existing infrastructure;
- Provide wholesale access (at different network levels) on reasonable and non-discriminatory terms; and
- Establish mechanisms for competitive service provision and customer switching on the infrastructures.

We note that the Digital Economy Bill also proposes that Ofcom report separately on communications services. Different, more consumer-oriented regulatory requirements are appropriate for the provision of services delivered over infrastructures and there may well be some commonality in what is required across the different retail markets in the communications sector. Where retail markets are working well, we would hope that the extent of sector-specific regulation of services could be minimal, in contrast with the ongoing requirement for infrastructure regulation.

Additional Points

- Mobile market

Ofcom has recently concluded its review of the mobile market. We still consider that there would be a more conducive environment for competition and innovation in mobile services if wholesale access to mobile infrastructure was required. Particularly in the light of the merger between Orange and T-Mobile in the UK, we believe this review should be revisited.

- Co-regulatory opportunities

In paragraph 3.14 of Appendix 3, which discusses Ofcom's simplification plan, earlier work on self and co-regulation is mentioned. We would like to see greater use made of co-regulatory initiatives in Ofcom's work – consistent with its duty under paragraph 4(c) of section 3 of the Communications Act to have regard to the desirability of promoting and facilitating the development and use of effective forms of self-regulation. A particularly pressing area where such an approach seems relevant is in helping the industry to deliver and maintain a revised approach to customer switching arrangements – particularly as NGA technology is

implemented – as discussed above in the section on Competition.

- Deregulation of numbering information requirements

On the deregulatory agenda, we have supported Ofcom's removal of detailed prescriptive codes of practice requirements in General Condition (GC) 14 in the area of preventing mis-selling of fixed line voice products and their replacement with the higher level requirements of GC24, supported by non-mandatory guidelines. We suggest the same deregulatory approach could be taken to other codes currently required under GC14 – such as those covering obligations on the provision of numbering information.

Finally, we would be interested in an update on Ofcom's work on a “new strategic framework” that was discussed in the draft annual plan for 2009/10 and confirmed in the final version of this.

I hope the comments above are helpful and would be happy to discuss them if that would be useful.

Yours sincerely

Aileen Boyd
Regulation Manager