



Citizens, Communications and Convergence

Discussion Paper

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Section 1

Introduction

- 1.1 The purpose of this paper is to discuss and clarify Ofcom's role in furthering the interests of citizens. It sets out our thinking on this issue and we hope that it stimulates debate.
- 1.2 Ofcom's responsibilities towards citizens are derived from the Communications Act 2003. We have a principal duty to further the interests of both citizens and consumers. We recognise that these interests are often different and that it may be necessary to resolve tensions between them. Furthering citizen rather than consumer interests may also involve distinct regulatory approaches.
- 1.3 Ofcom serves citizen interests in many ways, by promoting widespread access to communications services, ensuring plurality in the supply of radio and TV services, promoting media literacy and ensuring that disadvantaged groups of consumers are protected against market failures. To date, however, we have not published a paper specifically discussing how we seek to promote the interests of citizens.
- 1.4 In *Ofcom's Consumer Policy* (December 2006) we identified the key driver of the consumer interest: well-functioning markets that provide choice, quality of service and value for money; protection from physical and financial harm; protection from unreasonable annoyance and anxiety; and the ability to make informed choices. The statement also explained Ofcom's role in furthering these interests.
- 1.5 The fact that we have not published an equivalent statement on citizens has led some stakeholders to suggest that Ofcom lacks commitment in discharging its responsibilities in this area. Some have argued that we should present a more positive vision of our role in furthering the interests of all citizens. However, other stakeholders have suggested that there is no practical difference between consumer and citizen interests and that it is not necessary to distinguish between them.
- 1.6 In practice, the citizen focus has constantly informed Ofcom's thinking since the organisation's inception, whether in seeking a balanced approach to spectrum allocation or public service broadcasting. We have sought to ensure that our decisions are in the interests of citizens, as well as consumers. Nevertheless, we see some benefit in setting out our general approach to this question (in addition to the detailed assessments contained in specific policy documents), particularly in light of the experience we now have in working with our twin duties. There are two main reasons for doing so now.
- 1.7 First, it is important to ensure that all our decisions are consistent and transparent. This includes being clear about how our reasoning is affected by our statutory duty to further the interests of citizens and consumers. Where there are tensions between citizens' and consumers' perspectives, those tensions need to be exposed if their resolution is to be judged rigorous by our stakeholders. Secondly, increased convergence in the communications sector means that we need to think in new ways about the outcomes that regulation seeks to deliver for citizens and the mechanisms that are used to deliver them:
 - Multi-channel digital TV provides much greater choice, but is putting pressure on the ability of terrestrial broadcasters to provide some public service content. This

creates a need to examine new mechanisms for ensuring that a diverse range of public service content is available.

- The internet is now a fundamental part of the communications landscape. It is becoming an increasingly important way of supplying content that, in the past, was available only via broadcast networks. Changes in the way that content is supplied and consumed mean that the existing model of content regulation will need to evolve. Devising means to respond to citizens' interests in this area represents a considerable challenge.
- Telecoms networks are evolving too. Extra capacity may be needed to enable consumers and citizens to enjoy the benefits of innovative services and regulation has a role to play in ensuring that network operators have the incentives to invest in upgrading their networks. Related to this, there is a growing debate about how operators should manage their networks and whether they should be allowed to prioritise certain types of traffic.
- The increasing range of services on offer, and the innovative ways that they are being used, also raises the question of which services should be available to all members of society. At the moment, BT (and Kingston in Hull) has a universal service obligation that requires it to provide a phone line to anyone who wants one, and to do so at a reasonable cost. Over time, there may be calls for additional services, such as higher-speed broadband, to be made available more widely.

1.8 In thinking about how regulation will need to change in response to these developments, we will need a clear understanding of what the interests of citizens are and our role in furthering them. But this thinking does demand clarity about the limits of Ofcom's role. Our ability to further the interests of citizens (and consumers) is limited by the fact that we can take formal action only if Parliament has given us a specific power to do so, or if it is related to the exercise of that power. Another constraint is that we must comply with EU law. However, we can engage in wider discussions about issues that relate to the communications sector. A good example is the way that we contributed to the debate about digital TV switchover by providing analysis of market developments that was supported by market research. This helped the Government make an informed decision about fixing a date by which switchover should occur.

1.9 The limits to our powers mean that we cannot address all the issues that our stakeholders are concerned about, such as the possible health risks associated with mobile phone masts or the affordability of new communications devices and services. In some cases, other public bodies will have powers to act, but where this is not the case, it may be appropriate for us to seek to influence future legislation, at UK or EU level.

1.10 In summary, the need to clarify what we mean by the interests of citizens, and our role in furthering them, is driven by the need to make sure that we are consistent, transparent and accountable. The task is made more urgent, however, by the fact that over the coming years we will have to reconsider the outcomes that certain features of regulation seek to deliver on behalf of citizens and consumers, and to advise or decide how they should be delivered in practice.

1.11 In the next section we set out our understanding of the distinction between citizens' and consumers' interests. Section 3 considers the duties to further citizens' interests that are set out in the Communications Act 2003. Section 4 sets out a framework for

furthering citizens' and consumers' interests in practice and the paper concludes by highlighting the key projects through which we will be furthering citizens' interests in the coming months and years.

Section 2

Defining citizens' and consumers' interests

- 2.1 In this section we set out our understanding of the distinction between citizens' and consumers' interests. This underpins the way in which we seek to further these interests and resolve any tensions between them.
- 2.2 The need for Ofcom to consider separately the interests of citizens and consumers stems from section 3(1) of the Communications Act 2003. This requires Ofcom to:
- (a) further the interests of citizens in relation to communications matters; and
 - (b) further the interests of consumers in relevant markets, where appropriate by promoting competition.¹
- 2.3 It is notable that the section sets out a mechanism for furthering consumers' interests – promoting competition – although it is recognised that this will not always be appropriate. The Act does not specify a particular mechanism for furthering citizens' interests.
- 2.4 Ofcom believes that the interests of consumers are usually served by promoting competitive markets, although regulatory intervention is also needed to protect consumers from harmful practices and ensure that they have the information they need to make informed choices. Citizens' interests are also served by the market, which has an important role to play in delivering innovative services and increased choice. However, as we discuss in more detail below, furthering citizens' interests and, ultimately, benefiting society, is likely to involve a wider range of policy interventions.

The debate in Parliament

- 2.5 Parliament's decision to give Ofcom a dual principal duty was the result of a long and vigorous debate.
- 2.6 In 1998 the Department for Culture, Media and Sport and the Department for Trade and Industry published a Green Paper on communications which gave priority to: serving consumers' interests; supporting universal access to services at affordable cost; securing effective competition; and promoting quality, plurality, diversity and choice. Citizens were not mentioned.
- 2.7 By the time of the White Paper in December 2000, the Government's three central objectives had become: protecting the interests of consumers, in particular through promoting open and competitive markets; maintaining high quality of content, a wide range of programming and plurality of public expression; and protecting the interests of citizens by maintaining accepted community standards in content.
- 2.8 The Draft Communications Bill was published in 2002 and rather than referring to consumers and citizens, it referred throughout to customers. Ofcom would exist to

¹ It should be noted that section 3(6) of the Communications Act provides that if there is a conflict between our principal duty and our duty to fulfil EU obligations, then the latter takes precedence.

further the interests of customers of the services and facilities in relation to which it had functions. Although customer was not defined strictly to mean persons in a contractual relationship with a service provider, the term was widely understood to be narrower in scope than consumer.

- 2.9 Following public consultation and pre-legislative scrutiny by the Joint Select Committee, the Communications Bill was introduced in the House of Commons. This provided for a general duty to further the interests of consumers in relevant markets, where appropriate by promoting competition. Before the Bill was introduced there were extensive discussions about whether Ofcom should have a duty towards both citizens and consumers. At the time the Government was advised that this would not be possible to articulate in law because “citizen” had a specific meaning in immigration statutes which meant that it could not be used in a broader sense in the Communications Bill.
- 2.10 However, the issue of Ofcom’s general duty was re-opened in the House of Lords. Lord Puttnam, who had chaired the Joint Select Committee, proposed amending the Bill so that Ofcom would have a duty to further citizens’ as well as consumers’ interests. In the debate that followed, peers supported the amendment for a variety of reasons. Some supported it as a means of safeguarding public service broadcasting. Others expressed the view that citizens’ interests should not be left entirely to the market. Others said they wished to encourage Ofcom to take a long-term perspective rather than focusing solely on the short-term concerns of consumers. The amendment was carried by a substantial majority and survived into the version of the Bill which received Royal Assent in July 2003. As a result, Ofcom has a statutory duty to further two distinct sets of interests.

Ofcom’s interpretation

- 2.11 Ofcom’s mission statement, unveiled when the organisation started work, stated that, “Ofcom exists to further the interests of citizen-consumers, through a regulatory regime which, where appropriate, promotes competition.”
- 2.12 At the Voice of the Viewer and Listener Spring Conference in 2004, Stephen Carter, then Ofcom’s Chief Executive, said that the “citizen-consumer” formulation reflected the fact that, “the promotion of civic values must infuse all our actions; economics should be the basic tool which underpins all our actions”. And speaking at the Royal Television Society Dinner in December 2003, Ed Richards, then Senior Partner, Strategy and Market Developments, acknowledged that, “at the very heart of Ofcom is the duality of the citizen and the consumer”.
- 2.13 The use of the phrase “citizen-consumer” during Ofcom’s first year was an attempt to ensure that neither citizen nor consumer perspectives were lost. It was the result of considerable internal debate about how we could fulfill our principal duty in practice, and reflected the many ways in which citizens’ and consumers’ interests are connected. For example, using media and communications services to participate in society usually involves having access to those services as a consumer, and competitive markets often provide an important contribution to delivering diversity and plurality.
- 2.14 However, the hyphen was viewed by critics as a means of re-asserting the primacy of economic regulation, with “citizen” being subsumed into “consumer”. Although this was never intended, the phrase became a lightning rod for criticism and so ceased to be helpful. And from a practical view point of view, it made it hard to distinguish

between the interests of consumers and the interests of citizens, and to identify tensions between these sets of interests.

- 2.15 We moved away, therefore, from referring to citizen-consumers and began to distinguish more clearly between citizens' and consumers' interests. In a speech to the Westminster Media Forum in 2003, Ed Richards discussed the application of Ofcom's dual principal duty in the context of broadcasting. He said that the consumer rationale is focused on individual wants and choice, whereas the citizen rationale is focused on the benefits broadcasting offers to society (rather than to private individuals), bringing "broader social benefits". This interpretation of citizen and consumer interests reflects the approach taken in our *Review of Public Service Broadcasting – Phase 1* (April 2004).
- 2.16 Of course, the interests of citizens stretch significantly beyond broadcasting. All our work is relevant to citizens' interests and we recognised this in our review of consumer policy (referred to above), which reiterated the distinction between the individual interests of consumers and the shared interests of citizens.

Defining citizens' and consumers' interests

- 2.17 Ofcom has recognised, therefore, that citizens' and consumers' interests are different. We now want to build on our thinking to date and provide greater certainty about how these interests should be defined and our role in furthering them.
- 2.18 In seeking to define the interests of citizens and consumers, we think it is useful to consider what is involved in performing the roles of citizen and consumer.
- 2.19 As consumers, we participate in the marketplace, buying or using goods and services. In short, we focus primarily on what is good for ourselves as private individuals or businesses. It is generally thought that consumers want lower prices, increased choice and improved quality. They also want the information and tools that are needed to exercise choice, and to be protected against scams and other unfair practices.
- 2.20 As citizens, we participate in society, which includes the marketplace, but also extends far beyond it. Citizens are free to exchange goods and services, but are also free to participate in a whole range of social, cultural and political activities that are not the subject of commercial contracts.
- 2.21 We exercise the rights that society has decided we should have, such as the right to vote or the right to seek free treatment from the National Health Service. And we fulfill responsibilities, such as serving on a jury or keeping to the speed limit. An important principle is that all citizens are equal and have the same rights and responsibilities. In relation to media and communications services, this includes a right to have the access to services and content that are needed to participate in society.
- 2.22 However, the roles of citizen and consumer are often intertwined. Using media and communications services to participate in society usually involves having access to those services as a consumer. But, consumer goods can also be important tools for citizens. To use the example of mobile phones, they can be used to enhance personal safety, promote social networking and enable participation in society by people with disabilities, an example being the ability of people with hearing impairments to communicate using text messages.

- 2.23 The citizen perspective can be reflected in purchasing decisions in other ways too. A good example is ethical consumerism, whereby people seek to reflect what is good for society in their individual purchasing decisions. This might mean buying fair trade products or buying a hybrid electric car. However, despite being concerned in principle about the impact that their purchasing decisions have on society, consumers often find it difficult to put these concerns into practice; it is hard to put aside the self-interest that is the general premise of market mechanisms. In the context of the debate about how to promote more sustainable economic development, this has been referred to as the value-action gap. This describes the gap between the values that people would like to see reflected in society and their everyday private purchasing decisions.
- 2.24 This approach is one way to explain the role of government and regulators in facilitating collective responses to the issues we face as a society. An obvious and very large example is government action to alleviate climate change. An example in the communications sector is the value people attach to a diverse range of public service broadcast content, not based on the volume of their own consumption but because as citizens we take the view that such content should be widely available in a greater quantity than the market alone would provide.
- 2.25 Another example is provided by the debate about how the spectrum freed-up by the switchover to digital TV should be released to the market, and whether any of it should be reserved for particular uses. Our starting point is that markets will normally ensure that spectrum is used in the most optimal way, but we have carried out research to find out what, as citizens, our preferences would be for the use of the spectrum and whether they differ from the likely outcomes that would be produced by market forces.
- 2.26 Our assessment of whether the public interest was served by the acquisition by BSkyB plc of a 17.9% stake in ITV plc provides a further example of our role in safeguarding the interests of citizens. The central issue was whether this would reduce the plurality of providers of different TV and radio services and thereby reduce the range of views and opinions on offer.

Furthering citizens' interests

- 2.27 Ofcom's role in furthering the interests of citizens involves ensuring that people have access to the services, content and skills needed to participate in society, and that they are protected appropriately. To some extent, the market will deliver these aims, so meeting the needs of society will certainly not always require regulatory intervention.
- 2.28 Where intervention is needed, the rationale is that there are certain outcomes required by society which would not be delivered by markets alone. This might be described as the broader public interest or citizen interest.
- 2.29 When considering whether to intervene to achieve a defined broader public interest, there will often be uncertainty about the extent to which the market will deliver over time. So deciding whether regulatory intervention is necessary or not involves careful assessment. Intervention to extend the availability of communications services could stifle investment and innovation, but on the other hand, failure to intervene could mean that some citizens are excluded or services of public value lost.
- 2.30 In furthering the interests of citizens, we focus on what is good for society as a whole, but there will be direct benefits for some individuals. For example, public service

broadcasting benefits those citizens who watch it, while all citizens benefit indirectly from living in a better informed society. Other policy interventions may be aimed narrowly at particular social groups, such as older people or people living in remote parts of the UK, but have wider benefits like enhanced participation in society or greater fairness.

- 2.31 Furthering consumers' interests is often regarded as straightforward – to a large extent it is about making markets work better. We tend to think of a market as a vibrant, enticing place where consumers interact, but there is not an equivalent metaphor for the way that citizens interact in civil society. Citizens interact in many different places and in many different forms – in museums and music festivals, parks and squares, village halls, in elections of many different kinds and in the vast virtual space created by the internet. It is sometimes more difficult, therefore, to describe how Ofcom furthers citizens' interests, but this does not make the task in any sense subordinate to the task of promoting the interests of consumers.
- 2.32 Sometimes the interests of citizens may be at odds with the interests of at least some individual consumers. For example, promoting the availability throughout the UK of faster broadband access than is now commonly available might involve going beyond what the market would deliver. Such public intervention could be viewed as being in the interests of all citizens in that it would promote a more inclusive, interconnected society. It would also benefit consumers who would not otherwise be able to receive higher-speed broadband, such as those living in remote parts of the UK. In circumstances where uniform national pricing prevails, some of us might have to pay more for services that would have been available to us anyway, but we also benefit from a society that has more widespread access and is therefore better connected. The way in which we seek to resolve such conflicts is considered further in Section 4.
- 2.33 Ofcom seeks to further both the individual interests of consumers and the shared interests of citizens. So in any given case, it is necessary for us to establish what these interests are and to acknowledge any differences between them. We can then address any conflicts and decide on the most appropriate policy approach.
- 2.34 We are committed to carrying out research to understand people's views, but it is important that this reflects not only their views and expectations as consumers but also what they share as citizens, such as common values, culture and national identity. In some cases, it can be useful to carry out deliberative research. This means involving people in thinking about an issue as citizens, rather than as self-interested consumers, and considering the trade-offs between alternative policy options. Carrying out this kind of research helps to ensure that our decisions reflect the breadth of our interests as both citizens and consumers, and also ensures that we can take decisions which meet both our core duties.
- 2.35 An example of a project where deliberative research was a valuable input to our decision was our review of the rules that govern food advertising to children. In this case we established groups of citizens around the UK and asked them to spend a day learning about the issues, weighing the evidence and then deciding on what they thought was the best policy option.

Section 3

Duties to further citizens' interests

3.1 In the previous section we set out how Ofcom's role in furthering the interests of citizens involves ensuring that they have access to the content, services and skills that they need to participate in society and ensuring that they are protected appropriately. This section examines how Parliament set out in detail in the Communications Act 2003 how Ofcom should perform this role.

Securing required outcomes

3.2 Under section 3(2) of the Communications Act, Ofcom is required to secure the following outcomes:

- the optimal use for wireless telegraphy of the electro-magnetic spectrum;
- the availability throughout the United Kingdom of a wide range of electronic communications services;
- the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
- the maintenance of a sufficient plurality of providers of different television and radio services;
- the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services; and
- the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both:
 - unfair treatment in programmes included in such services; and
 - unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.

3.3 This is a complete list of the objectives that section 3 of the Communications Act requires us to secure and they all relate to the interests of citizens to some extent. There is a strong emphasis on securing the availability of a wide range of both electronic communications services, and TV and radio services. There is also a requirement to ensure a plurality of TV and radio providers, and a focus on maintaining broadcasting standards. Optimising the use of the spectrum involves thinking about how it can be used to meet the interests of citizens, as well as consumers. We have spent a great deal of time and effort considering this in our review of how the spectrum that will be released by digital TV switchover should be awarded. In this work, we also took into account the wide range of other mechanisms that can be used to promote citizens' interests, such as funding decisions made by Government and other bodies.

Things it is desirable for Ofcom to do

3.4 The Communications Act also sets out a number of considerations to which we must have regard in fulfilling our principal duty. This includes the following things which it is desirable for Ofcom to do:

- promoting the fulfilment of the purposes of public service television broadcasting;
- encouraging investment and innovation in relevant markets;
- promoting competition in relevant markets;
- encouraging the availability and use of high speed data transfer [or broadband] services throughout the UK; and
- preventing crime and disorder.

3.5 Again, all these things are relevant to citizens' interests. Competition, investment and innovation can lead to increased economic growth and productivity, which is to the benefit of society as a whole. Reduced crime and disorder represents an obvious public interest. There are two areas, however, where we can have a more direct impact on citizens.

3.6 The first is promoting the fulfilment of the purposes of public service broadcasting and, to help us deliver the general objective, we have defined this more closely as:

- to inform ourselves and others and to increase our understanding of the world;
- to reflect and strengthen our cultural identity;
- to stimulate our interest in and knowledge of arts, science, history and other topics; and
- to make us aware of different cultures and alternative viewpoints.

3.7 Secondly, it is desirable for us to encourage the availability and use of broadband internet access throughout the UK. Whereas we are called upon simply to secure the availability of electronic communications services and TV and radio services, high-speed data transfer or broadband is singled out as being a service that people should be encouraged to use.

Specific duties

3.8 There are also specific duties that relate to furthering the interests of citizens. There are a number of provisions designed to promote inclusion, such as:

- the duty to promote media literacy (section 11); and
- the duty to ensure the local content and character of local sound broadcasting services (section 314).

3.9 The Communications Act also contains specific provisions which are designed chiefly to prevent or tackle exclusion from society, such as the:

- duty to encourage availability of easily usable apparatus (section 10);

- duty to maintain a code relating to the provision of services for deaf and visually impaired people (section 303);
- duty to secure, so far as reasonable and practicable, that persons with disabilities affecting their sight are able to use the public teletext service (section 308); and
- duty to maintain a code of practice for electronic programme guides which ensures that they are accessible to persons with disabilities affecting their sight or hearing or both (section 310(3)).

3.10 These specific duties to promote inclusion, which involve going beyond what the market would provide, help to map out a more detailed picture of Ofcom's role in furthering the interests of citizens.

Interpreting our role

3.11 The Communications Act, therefore, requires us to fulfil certain specific duties and pursue a number of outcomes. It also sets out a number of things that it is desirable for us to do.

3.12 Whereas our specific duties are defined precisely, the outcomes tend not to be and, in some cases, the way in which the outcomes should be achieved is not specified. There are good reasons for this. The dynamic nature of the communications sector means that new services are emerging, services are being used in different ways and markets may address issues that required regulatory intervention in the past.

3.13 This means that we do have some discretion about how to fulfil our remit and so can take into account changes in the sector. For example, we are required to secure the availability throughout the United Kingdom of a wide range of electronic communications services, but Parliament did not specify which services should be made available.

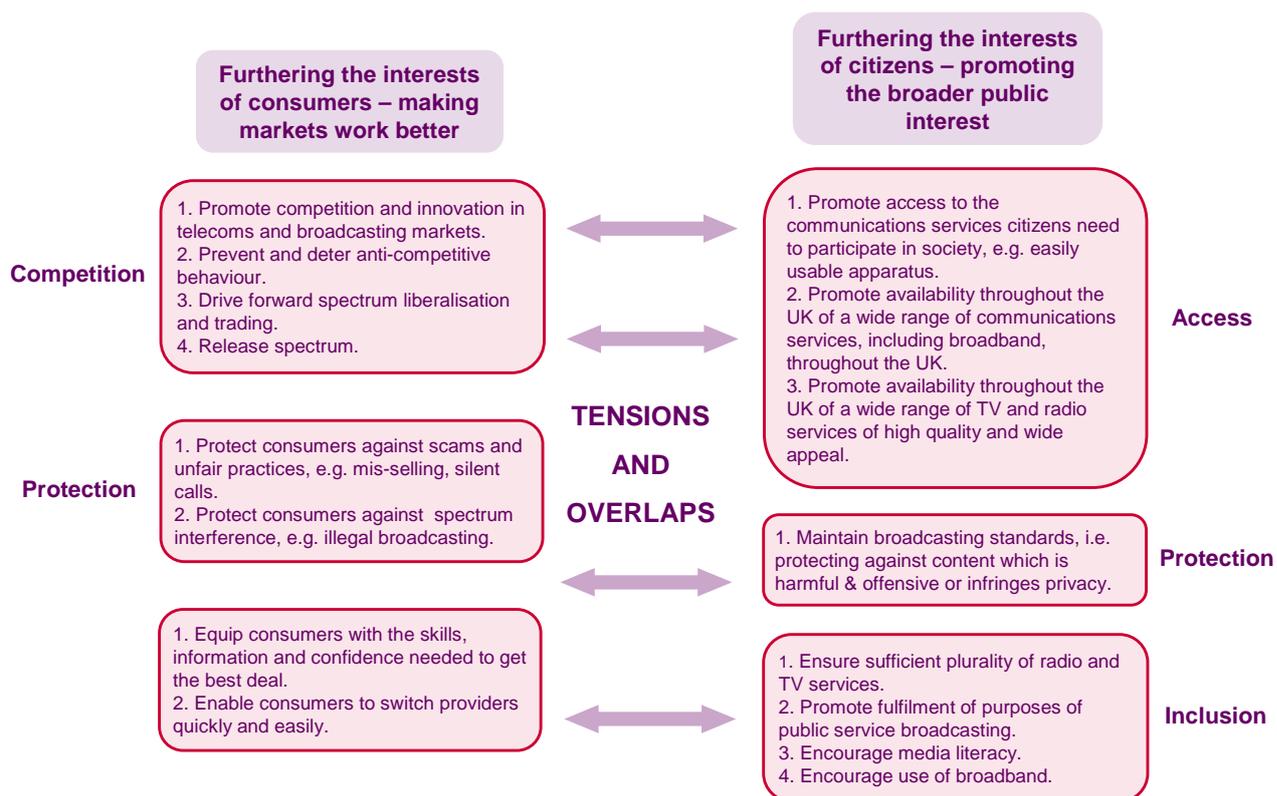
3.14 Our ability to pursue the outcomes is constrained by the need for us to act within our powers and comply with EU law. For example, the main mechanism for securing the wide availability of electronic communications services is the Universal Service Obligation, which is derived from EU law. At present, those we designate as universal service providers (BT and Kingston) are required to supply a fixed phone line and narrowband internet access to households throughout the UK, but they are not required to supply broadband internet access.

Section 4

Furthering citizens' and consumers' interests in practice

- 4.1 Section 2 set out how we define the interests of citizens and consumers. Section 3 examined the broader public interest that we are required by the Communications Act to pursue. This section seeks to bring these two elements together by setting out a framework for furthering citizens' and consumers' interests in practice, including the resolution of any conflicts between these interests that may arise.
- 4.2 The framework is represented in figure 4.1. The left-hand side describes how Ofcom furthers the interests of consumers by making markets work better, i.e. by promoting competition, and protecting and empowering consumers.
- 4.3 The right-hand side of the framework reflects the requirements of the Communications Act that are concerned primarily with delivering the broader public interest that would not be delivered by the market alone.

Figure 4.1: Ofcom's role in furthering the interests of citizens and consumers



Addressing tensions between citizens' and consumers' interests

- 4.4 The framework recognises that it may be necessary to address tensions between the interests of consumers and the interests of citizens. For example, making services available more widely for the benefit of society as a whole may mean that some consumers have to pay more for those services than might otherwise have been the case.
- 4.5 Resolving such tensions is likely to involve judgements about the extent to which the market will deliver the services in question and over what time period. Deciding whether regulatory intervention is necessary, therefore, involves understanding how a decision will affect different groups of citizens and consumers, and weighing carefully the pros and cons. Intervention could stifle innovation that would otherwise deliver benefits for consumers and lead to increased productivity, whereas waiting too long to intervene could deny citizens access to important services that they need to participate in society.
- 4.6 The Communications Act anticipated that conflicts would arise, providing that:
- “Where Ofcom resolve a conflict in an important case between their duties [to further the interests of citizens and to further the interests of consumers], they must publish a statement setting out:
- a) the nature of the conflict;
 - b) the manner in which they have decided to resolve it; and
 - c) the reasons for their decision to resolve it in that manner.”
- 4.7 There was an expectation, therefore, that we would need to resolve conflicts between citizens' and consumers' interests. When it comes to resolving such conflicts, we do have some discretion. The Communications Act provides that:
- “Where it appears to Ofcom that any of their general duties conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.”
- 4.8 What is apparent, however, is that Parliament expected us to make clear how tensions between citizens' and consumers' interests are resolved. And in any case, transparency in reasoning is at the heart of good regulatory practice.
- 4.9 In thinking through the potential tensions between citizens' and consumers' interests it can be helpful to consider where the main focus of the project lies. For example, for projects where the main focus is furthering the interests of consumers, any potential trade-offs are often revealed simply by asking, “How will this affect the interests of citizens?” This technique is easily reversed when a policy's focus is on citizens' interests.
- 4.10 Two recent examples of our work illustrate the way we try to resolve potential conflicts. In the case of public service broadcasting, it is clear that a major set of interventions take place in the market in order to secure a broader public interest. In undertaking the first, and now the second, review of public service broadcasting, this distortion of a market approach has been in question. In considering this question, Ofcom's Board take in to account our specific as well as our general duties and are

presented with the views of stakeholders, research, the views of the general public and analysis of the implications (both costs and benefits) of alternative forms of intervention in the interests of citizens. This includes the extent to which such intervention may have an effect on our interests as consumers, particularly in the sense that interventions may make markets work less effectively than we otherwise might expect. The documents relating to our reviews of public service broadcasting can be found at: http://www.ofcom.org.uk/tv/psb_review/

- 4.11 In the Digital Dividend Review, in which we considered how to optimise the use of the spectrum released by digital switchover, we took a similar approach. We assessed the possible benefit of a market-based approach to the release and use of the spectrum. But alongside this we asked whether it would be in the interests of citizens for us to modify such an approach. We considered the views of dozens of different stakeholders and conducted a substantial body of research to assess precisely this question. We sought out possible reasons for an intervention on broader public interest grounds and weighed this against the alternative, again considering both costs and benefits. Our conclusions on this complex set of questions can be found at: <http://www.ofcom.org.uk/consult/condocs/ddr/statement/>

Factors to take into account

- 4.12 The Communications Act sets out a range of factors that we should take into account when making decisions. This includes the needs of different groups of citizens and consumers, namely:
- the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
 - the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection;
 - the needs of persons with disabilities, of older people and of those on low incomes;
 - the opinions of consumers in relevant markets and of members of the public generally; and
 - the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- 4.13 This list of factors provides useful guidance on the groups of citizens and consumers to bear in mind when considering the potential impact of policy options and addressing the tensions that may arise.

Section 5

Conclusions

- 5.1 Ofcom's role in furthering the interests of consumers involves making markets work better by promoting competition and preventing anti-competitive behaviour, ensuring consumers have the information and tools to make informed choices, and protecting consumers against scams and other unfair practices. This leads to benefits for individual consumers in the form of lower prices, increased choice and improved quality. In short, consumer welfare is enhanced.
- 5.2 Ofcom's role in furthering the interests of citizens involves ensuring that they have access to the services, content and skills they need to participate in society, and upholding the standards of protection that Parliament has set out in legislation. To some extent, these objectives will be delivered by the market. So for Ofcom, furthering the interests of citizens involves closing the gap between what the market and competition will deliver and an identifiable broader public interest.
- 5.3 The Communications Act provides guidance about the particular public objectives that we should pursue. We have certain specific duties, such as promoting media literacy, and we must also pursue specific outcomes, such as the availability throughout the UK of a wide range of electronic communications services and a plurality of TV and radio providers.
- 5.4 Some of the outcomes described in the Communications Act are not defined precisely and, in some cases, the way in which the outcomes should be achieved is not specified. We do have some discretion, therefore, about how we fulfil our remit, although our powers to act are also constrained.
- 5.5 This paper is designed to promote a shared understanding of what the interests of citizens and consumers are, how we identify them, what the tensions between them might be, and clarity about the outcomes that Ofcom is required to pursue.
- 5.6 Clarifying Ofcom's role in furthering citizens' interests is particularly important in the light of convergence. The emergence of new communications services, and new ways of communicating, mean that citizens need to be more media literate. There is concern that the rollout of new services will lead to an increased digital divide. In the transition to digital switchover there is increasing pressure on the existing model of delivering public service broadcasting. Growing competition in telecoms markets means that we may need to revise the way in which universal access to essential services is defined, delivered and funded. The ways in which we liberalise and release spectrum will have significant implications for citizens. The internet is an increasingly important way of supplying and sharing content. In short, the citizen will be at the centre of much of our work over the coming years.
- 5.7 By distinguishing clearly between citizens' and consumers' interests and seeking to recognise where they may conflict and overlap, we will be able to make consistent and transparent decisions, and our stakeholders will be able to hold us accountable for the ways in which we have exercised judgement. The framework we have set out will help to ensure that we are effective in both making markets work better and benefiting society more generally.
- 5.8 It will be important for us to ensure, however, that we apply the thinking set out in this paper in practice. We regularly review the guidelines on our approach to policy-

making and will continue to do so. We currently plan to publish revised guidelines during 2009, which will enable us to reflect the comments and feedback on this paper that we receive from stakeholders.

- 5.9 Over the coming months and years, as convergence increasingly takes place, we think that there are some issues that will be of particular importance to citizens. Our agenda will encompass:
- Promoting widespread availability of higher-speed broadband services as next generation networks are rolled out.
 - Completing our second review of public service broadcasting to ensure that its purposes can still be fulfilled in a world of multi-channel digital-only TV.
 - Promoting increased access to communications services so that citizens are better able to participate in society.
 - Ensuring plurality in the supply of TV and radio services to ensure that a diverse range of views and opinions is on offer.
 - Determining the future of radio regulation to ensure that a wide range of services continues to be available.
 - Ensuring that the interests of citizens are reflected in our decisions about how to optimise the use of the spectrum.
 - Promoting media literacy to enable citizens to access, understand and create media content.
 - Developing a model for content regulation in the internet age that provides adequate protection to the public, taking into account the practical barriers to regulating the internet.
- 5.10 We look forward to receiving your views on this paper, and on the issues that should be addressed as part of our agenda to promote the interests of citizens. Please send your comments to alastair.bridge@ofcom.org.uk by 8 October 2008.