

Minutes of the thirty-fourth meeting of the Ofcom Consumer Panel

Tuesday 27 February 2007 at 11.15 hours

Ofcom, Riverside House, 2A Southwark Bridge Road, London SE1 9HA

Present:

Consumer Panel

Colette Bowe (Chairman)
Ruth Evans (Deputy Chairman)
Fiona Ballantyne
Roger Darlington
Graham Mather
Kevin McLaughlin
Jeremy Mitchell
Kate O'Rourke
Bob Twitchin
Allan Williams

In attendance

David Edwards (Consumer Panel Secretary)
Julia Guasch (Consumer Panel Support Executive)
Georgia Klein (Consumer Panel Manager)
Dominic Ridley (Policy Executive to the Panel)
Philip Rutnam (Partner, Spectrum Policy Group, Ofcom) (items 1 and 2)
Helen Normoyle (Director of Market Research, Ofcom (item 7)
other Ofcom colleagues (items 1, 2, 6 and 7)

1. Welcome and introductions

1.1 Immediately prior to the meeting members had attended an Ofcom consumer and citizen stakeholder event on the Digital Dividend Review (DDR). The Chairman confirmed that Dominic Ridley would draft a Panel response to Ofcom's DDR consultation, if necessary indicating consensus views and differences of opinion. Jeremy Mitchell suggested that the response could take an interrogatory form.

1.2 The Chairman welcomed Philip Rutnam, colleagues involved in Ofcom's DDR project and Panel members to the meeting. Apologies were received from Simon Gibson.

AP1 Dominic Ridley to draft a Panel response to Ofcom's DDR consultation by 9 March, members to comment by 16 March, to be submitted 20 March.

2. Digital Dividend Review (DDR)

2.1 The Panel had produced a list of questions it felt had not been fully

addressed in Ofcom's consultation. The questions had been provided to Philip Rutnam in advance of the meeting and discussion would focus on answers.

2.2 On issues related to a Spectrum Bank:

- the general approach proposed by Ofcom was to make spectrum available through the market; spectrum trading and flexible licences should help to ensure spectrum continued to be available for new applications;
- however, Ofcom recognised that markets were not perfect and that market failures could occur; but holding spectrum back from award would have a cost, and there would need to be good reasons for incurring this cost;
- the argument for an innovation reserve was strongest for low power technologies because of the potential for market failure;
- it would be difficult to determine how much spectrum to reserve and for how long; Ofcom would welcome thoughts on this; other evidence would include pressure on the spectrum capacity that was already available;
- on buying back spectrum – the proposal was to award spectrum for a minimum term of 18 years; users would require some certainty if they were to invest; Ofcom had limited powers and could only take back spectrum for compelling reasons – eg public safety or national security;
- the Chairman said that the Panel had not used the term 'Spectrum Bank' lightly; it would be interesting to observe future management of spectrum trading and the associated risks.

2.3 On issues of universality:

- Ofcom did not feel that spectrum licence requirements to provide universal coverage was generally the best approach, as it was very difficult to assess the socially desirable level of coverage for a new service years beforehand; Ofcom's general approach favoured securing additional coverage for social reasons through public funding, as this allowed policy makers to deal with problems in a much more flexible, tailored and responsive way;
- Ofcom's current proposals were to award spectrum on a technology/service neutral basis, without conditions on levels of roll-out or coverage; reasons for this approach included the uncertainties about what the best use of this spectrum might be in 5, 10 or 15 years' time;
- the example of High Definition TV (HDTV) was discussed; Ofcom considered that HDTV could be introduced on the existing 6 DTT multiplexes, using additional capacity that would become available at switchover;
- this approach to rollout was analogous to fixed broadband where there had been issues about availability; these had been addressed by competition and by local and regional schemes to provide wider coverage rather than through regulation by Ofcom;
- identification of coverage obligations could make sense if it were known which services would be developed and at what costs and benefits; not knowing what the services would be made it difficult to impose coverage

- obligations in licences; it would be more sensible to respond when services emerged and there could be a response via public subsidy;
- Ofcom's proposal was that providers would be allowed to decide how far to deploy services in the UK; one option would be to break up a spectrum allocation on a regional basis.

2.4 On issues related to the auction process and market failure:

- the 3G mobile auctions had occurred during the dotcom bubble and it had been the first UK auction of its kind; since then more spectrum had become available, there had been more auctions and bidding had been much more realistic; Ofcom was aware of the dangers of overbidding but with more spectrum available the price of spectrum should fall and supply should be increased;
- market failure – this would be apparent if the DDR release of spectrum did not maximize value to society; Ofcom had to design an auction process that would allow as many organisations as possible to bid and that encouraged participation;
- the Panel understood reluctance to take responsibility for broader social goals but felt that it would be difficult for Ofcom to decline that role;
- 'hoarding' of spectrum would be an unwelcome outcome and spectrum auctions would be designed to promote competition, work was underway on a project on spectrum and the scope for anticompetitive behaviour; Ofcom had wide competition powers but was planning to consult on the range of competition issues arising from the DDR;
- previous auctions had seen market entry and the expansion of activity by current players; there could be speculation in spectrum or onward sale to third parties – such activity would not necessarily be anticompetitive;
- Ofcom did not have powers of compulsory purchase analogous to property purchase but a Panel concern was whether Ofcom had the powers to correct a mistake arising from auction of spectrum;
- regarding the ability to revisit outcomes of spectrum allocation, it was Ofcom's view that a balance had to be struck, between certainty for investors and flexibility for Ofcom to respond to unanticipated events;
- Ofcom had undertaken economic modelling, not from the perspective of who would be the winners of auctions but to design a process to allow maximum benefit for society; a number of scenarios had been modelled, with a range of net present values and other variants to allow comparison of spectrum packages to ensure a flexible award process; technical analysis had also been carried out, looking at competing demands on use.

3. Declaration of members' interests

3.1 The Deputy Chairman had joined the Advisory Board of ING Direct UK. The Chairman asked members to keep the Secretary informed of any changes to their interests or the information about them posted on the Panel website.

AP2 Secretary to update register of members' interests and biographical information.

4. Minutes of the meeting on 16 January 2007 and matters arising

4.1 Minutes were agreed subject to minor amendments. The Panel had planned to meet in Wales on 16 May 2007 but a new Wales Panel meeting date would need to be agreed because the Panel would be meeting with the Ofcom Board in May. Roger Darlington had drafted a Panel response to Ofcom's consultation on its Draft Annual Plan and was commended. He had also written a paper on engagement with consumers and it was agreed that it would be the basis of an agenda item at the March 2007 Panel meeting – Georgia Klein would draft a cover paper for the meeting with an emphasis on the art of the possible, with Roger Darlington's paper annexed. The Chairman, Graham Mather and Dominic Ridley would resume discussion of a DDR consumer interest toolkit study – related to the toolkit, Ofcom's statement *Taking account of consumer and citizen interests – Progress and evaluation* had been copied to members.

AP3 Secretary to amend minutes of January Panel meeting.

AP4 Secretary to ensure that consumer engagement is on the March agenda.

AP5 Georgia Klein to draft a cover paper on consumer engagement for the March Panel meeting, Roger Darlington's paper to be annexed.

AP6 Chairman, Graham Mather and Dominic Ridley to resume discussion of a DDR toolkit study.

5. Chairman's report

5.1 The Chairman and Kevin McLaughlin had attended productive meetings in Belfast, including a meeting with Ofcom's Advisory Committee for Northern Ireland, and discussed cross-border and digital switchover (DSO) issues. She had spoken at a Westminster eForum on 21 February 2007 on the eConsumer. The Chairman had met Sir Alistair Graham, recently appointed chairman of the premium rate services regulator ICSTIS (Independent Committee for the Supervision of Standards of the Telephone Information Services) and had discussed the idea of some joint work between ICSTIS and the Panel. The Bill to boost consumer advocacy – to create Consumer Voice – was working its way through Parliament. The Panel had argued for cross membership of the Panel and the Consumer Voice board, ie a member that would sit on both bodies, and that proposal appeared to be gaining support. Dominic Ridley would ensure that the Panel was kept up-to-date on developments. The day after the January Panel meeting the Chairman and Deputy Chairman had met Ed Richards, Ofcom Chief Executive, and had discussed DSO – they would be discussing DSO with Shaun Woodward MP, Minister for Creative Industries & Tourism, in the afternoon. The Chairman confirmed that the Panel's budget bid for 07-08 had been agreed.

AP7 Dominic Ridley to circulate to members regular Ofcom updates on the progress of Consumer Voice legislation in Parliament.

6. Self- and co-regulation project

6.1 Members had received a discussion paper that evaluated the strengths and weaknesses of a number of existing UK communications self- and co-

regulatory organisations or schemes. The Chairman and Jeremy Mitchell declared that they had been founding members of the Council of the Office of the Telecommunications Ombudsman Service (Otelco). Jeremy Mitchell had been a member of ICSTIS also. Roger Darlington had been Chairman of the Internet Watch Foundation (IWF). Otelco, ICSTIS and the IWF were three of the bodies that had been evaluated during the first phase of the project. The aim of the Ofcom project was to understand where self- and co-regulation had worked well and what were the strengths and weaknesses of each scheme or organisation. Its second phase would be to look at a greater number of schemes including outside of the communications sector and outside the UK. Members made a number of comments and an Ofcom colleague responded:

- Jeremy Mitchell said that what was missing from the paper was treatment of enforcement and sanctions, both were critical to the success of self- and co-regulatory bodies; a related question was whether to have schemes articulated with them for redress; he argued that it would be a mistake to look at alternative dispute resolution (ADR) schemes in isolation, their role was to resolve disputes at the end of a long process, it was necessary to look at the complete process including complaint handling by communications providers – an Ofcom colleague agreed that enforcement and sanctions were important considerations, along with the question of how powers were spread between self and co-regulatory bodies and Ofcom, for the latter this could be in the form of ‘backstop’ powers, Ofcom was considering these matters; on ADR schemes, Ofcom’s starting point had been to look critically at Otelco and CISAS (the Communications & Internet Services Adjudication Scheme) and ask what they were set up to do and whether they were doing their jobs effectively, a marker of success included the ‘signposting’ of the schemes for consumers, Ofcom’s Consumer Policy team was looking at these issues;
- Roger Darlington commented that self- and co-regulation was always more difficult in practice than its supporters realised; there remained a tension between industry funders and independent elements in charge of such schemes; the former were often minded to support their own interests; governance was a critical issue; he argued that Ofcom should promote good practice, including external audit processes;
- Graham Mather supported analysis of models outside the communications sector where there were increasing shifts towards co-regulation; it was important to establish clear paths to redress; he was not convinced that there was sufficient rigour in Ofcom’s analysis of the achievements and weaknesses of existing schemes;
- Allan Williams asked why the review of schemes was taking place now – an Ofcom colleague said reasons included the need to implement the Audiovisual Media Services (AVMS) Directive, questions related to the future shape and size of Ofcom and opportunities to allow industry to police itself;
- Kate O’Rourke said that Ofcom’s analysis had identified weaknesses in current schemes, some suggested consumer detriment, there was comfort in the knowledge that Ofcom would be addressing these; the Chairman agreed and said it would not just be a matter of regulatory technique but

what would happen to benefit consumers.

6.2 There remained the question of how the Panel could feed into Ofcom's project. It was agreed that the Panel would supply an advice note and it would be annexed to an Ofcom paper in preparation for the Ofcom Board.

AP8 Dominic Ridley to draft a Panel advice note on Ofcom's self- and co-regulation project (for annexing to an Ofcom Board paper)

7. Media literacy

7.1 Members had received an information paper on Ofcom's three-year strategy and plans for Media Literacy. Helen Normoyle introduced discussion and said that a number of issues had been brainstormed with Ofcom's Content Board to determine the critical issues and Ofcom's work plans were still in the process of development. Members made a number of comments:

- Allan Williams raised the issue of terminology, ie media literacy vs other terms to describe the ability to choose and use communications services;
- the Deputy Chairman queried whether Ofcom had agreed funding for its media literacy work with the Department for Culture, Media and Sport – Helen Normoyle said that funding had been agreed for the coming year;
- Roger Darlington said that convergence would be a critical factor, particularly in areas where there was no regulation; he suggested that Ofcom could approach the IWF and Nominet, the Internet registry for .uk domain names, to engage in partnering activities;
- Graham Mather asked how Ofcom intended to measure changes in levels of media literacy over time and what would be its starting point – Helen Normoyle said that the answer would depend on what Ofcom set out as its priorities; Ofcom was still thinking about what success would look like;
- the Deputy Chairman asked how Ofcom intended to determine the focus of its work – Helen Normoyle said that this would proceed on a number of fronts: examination of the Media Literacy landscape and Ofcom's statutory remit, lessons learnt from previous Media Literacy audits and discussions, work underway and outstanding issues; it would be an iterative process that would include engagement with the Ofcom Content Board, the Panel and stakeholders; another dimension to the Media Literacy project would be embedding Media Literacy into Ofcom's policy making;
- the Chairman said that it would be useful to know how the BBC interpreted promotion of Media Literacy as part of its Charter – an Ofcom colleague said that the BBC audited its Media Literacy activities, some content would be delivered nationally, some locally; the Chairman said that the Panel's focus had been on the ability to use technologies with confidence;
- Bob Twitchin had come across a recent European Union publication on media literacy and work with people with a learning disability; he would forward details to Helen Normoyle;
- the Deputy Chairman noted that the focus of the Ofcom information paper had been on citizens – an Ofcom colleague said that consumer issues would also be covered in Ofcom's Media Literacy work;

- the Chairman drew attention to parallels with work on Financial Capability being developed by the Financial Services Authority; the Secretary was asked to forward Helen Normoyle details of Consumer Policy contacts at the Financial Services Authority.

7.2 The Chairman drew discussion to an end. It was agreed that it would resume at a working dinner on 19 March 2007, in the company of Ofcom colleagues. Julia Guasch would organise the dinner, to take place at Ofcom and Panel members would do some forward thinking on discussion topics. It was suggested that media literacy could be an agenda item at the next meeting of the Consumer Forum on Communications (CFC), if diaries permitted Ofcom colleagues to take part.

AP9 Bob Twitchin to forward Helen Normoyle details of an EU publication covering media literacy issues and people with learning disabilities.

AP10 Secretary to forward Helen Normoyle details of Consumer Policy contacts at the Financial Services Authority working on Financial Capability.

AP11 Julia Guasch to organise 19 March Panel dinner.

AP12 Members to provide Dominic Ridley with media literacy discussion points in advance of the 19 March dinner.

AP13 Secretary to make media literacy a March Consumer Forum agenda item if relevant participants are available.

8. Why connecting older people is important

8.1 Jeremy Mitchell introduced this item and members had already received a paper recommending a policy position to the Panel. There were two elements to consider: the Panel's research had shown that a significant cohort of older people were disengaged but could be encouraged on-line with appropriate support; second, the Panel's workshop had revealed that there were a number of voluntary and community organisations involved in delivery of training programmes for older consumers but they were all working in isolation and with little knowledge of other initiatives. The policy paper proposed a framework to allow groups to build on each others' experiences, an inexpensive and cost effective means to improve the effectiveness of training and harness the expertise of the voluntary sector: a portal holding up-to-date information on training and funding. The Panel agreed to adopt the recommendations in the paper. The next step would be to take forward the portal proposal and a number of suggestions were made, including writing to the relevant Department of Trade and Industry minister or raising the portal at the Panel's next meeting with government officials. It was agreed that the Chairman and Deputy Chairman would consider the best approach to take.

AP14 Chairman and Deputy Chairman to take stock with Dominic Ridley on how best to take forward the Panel's web portal idea.

9. Update from Consumer Panel Manager

9.1 Georgia Klein reported that she had been working with the Panel's

communications adviser on a news article on consumer anxiety; Ofcom was working on a series of consumer fact sheets. A redesign and clean-up of the Panel website was underway, with the emphasis on improving navigation and a more sensible ordering of content, including a 'Looking ahead' section. Some of the changes would overlap with issues raised in Roger Darlington's consumer engagement paper. The March Panel meeting would be Georgia Klein's last prior to taking maternity leave. A new colleague would join the support team at the end of March to work alongside Dominic Ridley on policy matters.

10. Members' updates

10.1 Bob Twitchin had met an Ofcom colleague to discuss Ofcom's usability/accessibility research. It was agreed that this would be a topic for discussion at the April 2007 Panel meeting. He remained concerned about usability in relation to DSO where there appeared to be limited progress. Roger Darlington had attended a Public Voice conference on the DDR and an Ofcom Next Generation Access (NGA) stakeholder event. At the latter event one of the speakers had talked about a scheme in the Netherlands where a local community had funded its own broadband network creating fibre to the home through a co-operative. The Chairman said that NGA would benefit from a capital market mechanism, enabling people to come up with projects and find a source of funding, a bank of some kind that could mediate between local demand and those with the capability to meet it.

10.2 Graham Mather had been monitoring developments in Europe and on the agenda were the issues of mobile roaming and increased regulatory powers for the European Commission in the communications arena. Fiona Ballantyne reported that progress was being made on a range of Panel consumer research projects: this year's tracker report, consumers' experience of switchover, children and the internet, social inclusion; and a project on small businesses. A research manager had begun work, under contract. The Panel had already sketched out its research plans for 2007-08. The Deputy Chairman had attended catch-up meetings with Ed Richards and Claudio Pollack, Ofcom's Director of Consumer Policy. Allan Williams was engaged with the Panel's research projects. He reported that he would be publishing an article in the Consumer Policy Review on the current challenges in regulation.

10.3 Jeremy Mitchell had attended a meeting at the Scottish Parliament on spectrum hosted by the Cross-Party Media and Culture Committee – universal disquiet had been expressed concerning the proposed DDR auction process. He reported that the Scottish Consumer Council was engaged in mass observation research on DSO, with participants keeping diaries and periodic research publications expected. Kate O'Rourke had met Peter Davies, Ofcom's Director of Radio & Multimedia. He had confirmed that Ofcom's focus was on regulation of digital radio. The community radio sector was doing well and an Ofcom review was expected this year. A major project will be the award of a 2nd national digital multiplex. An Ofcom publication on the future of radio was in preparation. Kevin McLaughlin had attended an Ofcom Annual Plan meeting in Belfast. Northern Ireland civil servants had taken part and were seeking Ofcom support to

encourage take-up of broadband. The Office of the First and Deputy First Minister would be publishing a social inclusion report shortly. Kevin McLaughlin had met Eleanor Gill, Chief Executive of the General Consumer Council for Northern Ireland. It was agreed that a representative from the Consumer Council would be invited to attend meetings of the CFC.

AP15 Secretary to ensure usability/accessibility is on the April agenda.

AP16 Secretary to invite the General Consumer Council for Northern Ireland to send a representative to Consumer Forum meetings.

11. Other matters to note/agree

11.1 Members had been provided with a written report on Panel activities, Ofcom publications, policy projects and events and approaches to the Panel; its contents were noted.

12. Any other Business

12.1 Jeremy Mitchell raised concern about TV quiz shows and the high costs for callers taking part via premium rate telephone numbers. It was agreed that Dominic Ridley would obtain a briefing from Ofcom on this issue. Some members were not receiving daily media briefings by email. Georgia Klein would forward members details of the different briefings that were available and Julia Gusach would ensure that members received the briefings they requested. Graham Mather said that there had been no recent reports from Ofcom on complaints data nor Ofcom's market monthly reports.

AP17 Dominic Ridley to obtain a Panel briefing from Ofcom on TV quiz numbers.

AP18 Georgia Klein to advise members of the best email media and other briefing options and Julia Guasch to implement members' requests.

AP19 Dominic Ridley to ensure that members receive regular reports on consumer complaints and Ofcom market monthlies.

.....Chairman

.....Date.