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Dear Justin

Ofcom's Annual Plan for 2006-7

Further to our meeting on 27 September, as agreed, we discussed options for Ofcom's future work programme at a meeting of the BSG's Regulatory Affairs Working Group and, as I thought, there is a definite interest in Ofcom doing as much as it can to understand future developments and consider what challenges further convergence will bring. Whilst the BSG is broadly supportive of Ofcom's current work programme, there is some concern that it still has a focus and structure that tends towards vertical consideration of telecoms, broadcast and spectrum issues.

We understand the drivers for Ofcom's current programme, outlined in its Annual Plan for 2005/6, which groups its activities under the seven theme headings of:

1. Implementing strategic reviews
2. Opening up markets and encouraging innovation
3. Addressing citizen and consumer issues
4. International engagement
5. Opportunities for regulatory reduction
6. Working effectively
7. Understanding future developments

Whilst we recognise the need for Ofcom to monitor the progress of its' current initiatives, we believe that its Annual Plan for 2006/7 recognises the importance of progressing point 7; i.e. the implications of the converging market.

The advance of convergence means that players across the value chain are faced with varying degrees of uncertainty and few can think long term. As a consequence, Ofcom can fill a strategic vacuum, above and beyond its consultation process, to provide some forward thinking on how market structures might change, what new bottlenecks might emerge and whether they are likely to be enduring or transitory. Ofcom began this process in its Strategic Review of Telecoms (e.g. Annex J of the Phase 2 consultation document) and identified areas such as premium content, DRM and conditional access as needing further review. Others might emerge from technological convergence and the BSG would encourage further work along these lines to assess whether the market is likely to deliver desired outcomes; i.e. whether or not regulatory intervention is required.

In this context, whilst most components of the value chain come within Ofcom's remit, some do not, such as the creative sector. However, they could be impacted by decisions that Ofcom takes in exercising its remit and Ofcom should consider how impact assessments can project the possible effects, both direct and indirect, on the whole value chain.

In relation to citizen/consumer issues, the current debate around the review of the TVWF Directive has highlighted content regulation which, increasingly, may need to be considered in both competition (e.g. access to content) and consumer protection terms. Regarding the latter, concerns over illegal Internet content need to be balanced against the risk that premature regulation of 'commercial communications' will inhibit new business models and revenue streams. The answer may lie in self-regulation at national level and the BSG is willing to facilitate further activity in this area and it is already liaising on this issue with Ofcom.

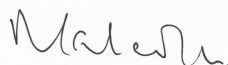
In addition to the above, the BSG sees the need for continuing work to ensure that investment in new infrastructure meets consumer demands for next generation services. The BSG has taken the view that new network investment must be encouraged to occur ahead of, rather than lag behind, the demand curve for next generation services – which implies a regulatory environment where technical; innovation will be encouraged and the significant levels of investment risk involved will be rewarded with appropriate financial return over an extended period. We support Ofcom's work programme in this area and believe that the forthcoming next generation access consultation to be key.

We have already expressed support for the proposal to create a 'multi-lateral industry group' (or NGNCo) which we believe could act as a vehicle for bringing next generation content and service providers together with network operators and equipment suppliers to address commercial as well as the technical (interoperability and interconnection) issues suggested by Ofcom. We are also willing to work further with Ofcom on this aspect.

Finally, the BSG would support Ofcom's efforts in seeking a greater level of harmonisation of regulation across other EU states, and sees this as a vital part of the "international engagement" aspects of Ofcom's plan.

I hope that this input is helpful. If you have any questions or comments, or if you would like the BSG to facilitate more detailed discussion on any of the above, please let me know.

Yours sincerely



Malcolm Taylor
Chairman, BSG Regulatory Affairs Group