

Advice to Ofcom from the Ofcom Consumer Panel



Ofcom
OFFICE OF COMMUNICATIONS

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| Title of Ofcom Project: | Self and Co Regulation |
| Date: | 04/04/07 |
| Author: | Dominic Ridley |
| Advice given at meeting | Consumer Panel Meeting |
| Date: | 27/02/07 |
| Attendees: Ofcom | Xxxxxx Xxxxxx |
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1. Ofcom is evaluating a selection of co and self regulatory schemes as part of a wider project on self and co regulation. Ofcom presented a discussion paper on this topic to the Consumer Panel on the 27 February 2007 (paper CP/2007/08). The Panel made comments on the paper and committed to reiterating its advice in writing to the Ofcom policy team.
2. We welcome Ofcom's review of self and co regulatory models which looks at their strengths and weaknesses. The success and effectiveness of these models are important to the protection of consumers from possible detriment. And we agree with Ofcom that it is important to look beyond the communications sector when undertaking the review because of the increasing shift towards self and co regulation in other market sectors. The wider analysis of these self and co regulatory models will be beneficial to understand what works and what does not.
3. However, when undertaking the review we think there needs to be clear working definitions of both self and co regulation as well as an explanation of the difference between the two concepts. This is especially important as, so far as we are aware, 'co regulation' is not mentioned specifically in the Communications Act 2003. Also, there needs to be a clear account of the articulation between self and co regulation and Ofcom's formal powers, especially in the context of sections 6, 52-55 and 120-124 of the Act.
4. We would like to see in the review an evaluation of which enforcement processes or sanctions for self or co regulatory bodies are effective and those that are not, as we think enforcement and sanctions are critical to the success of such bodies. Thus, it is not only important for Ofcom to understand or implement regulatory technique but to provide the correct powers to regulatory bodies so that it can deal with an industry stakeholder, for example, that refuses to follow regulatory guidelines. Therefore, we ask Ofcom to undertake analysis, if it is not already, on: how

regulatory powers in the communications sector are spread between self and co regulatory bodies and Ofcom, what back stop powers Ofcom has and are they adequate, and are the level of fines that can be imposed on companies that transgress the rules adequate.

5. We think it is a mistake to look at alternative dispute resolution (ADR) schemes in isolation from the dispute process in the round. The redress schemes are accessed at the end of an already long process for consumers. To minimise possible detriment for consumers it is key that industry stakeholders resolve disputes quickly, where possible, before reaching this stage. It is also important that consumers are made aware of their rights and are adequately informed of the redress process. Thus, industry stakeholders must signpost customers to the appropriate redress scheme, at the appropriate time, if a dispute between the two parties is unable to be resolved.
6. We recommend to Ofcom that close attention needs to be given to the governance of self and co regulatory schemes. In operational terms, those schemes that have a role in promoting the interests of consumers or citizens need not only to be independent of the interests of the industry, but to be seen to be independent. This has implications for the structure and powers of a scheme's governing body, as well as its composition. For example, a formula that has worked successfully in relation to Otelos¹ is that the Chairman and a majority of the Members of the governing Council must be independent of the telecommunications industry. Also, it has implications for the way that schemes are funded. While it is absolutely appropriate for the industry to be satisfied that the funds it raises for a self or co regulatory scheme are pitched at an optimal level and that the money is being spent efficiently and effectively, there need to be robust safeguards to make sure that operational independence is not jeopardised. Thus, an analysis of government structures and guidance for schemes by Ofcom would be welcome.
7. The Ofcom paper presented to the Panel identified weaknesses in current schemes and some of the weaknesses identified suggested consumer detriment. We wonder whether this consumer detriment has been analysed and if so, could the analysis be seen by the Panel?
8. Ofcom sets out in its paper why it is undertaking the review into self and co regulation but we would like to know what Ofcom's plans are after the review has been undertaken. Finally, the Panel wishes to engage further on this work with Ofcom in the future.

¹ Colette Bowe, Chairman of the Consumer Panel was previously the Chairman of Otelos. Jeremy Mitchell was previously a council member of Otelos