

# Minutes of the 70<sup>th</sup> meeting of the Communications Consumer Panel

Wednesday 15 September 2010 at 9.00 hours

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

## Present

### Consumer Panel

Anna Bradley (Chair)

Fiona Ballantyne

Kim Brook

Colin Browne

Roger Darlington

Maureen Edmondson

Leen Petré

Damian Tambini (items 3-11)

Bob Warner

### Apologies

Louisa Bolch

### In attendance

Alistair Bridge (Principal Adviser)

Nicola Ebdon (Panel Secretary)

Emily Keaney (Policy Adviser)

Ofcom colleagues (items 6, 7 and 8)

## 1. Declaration of members' interests

1.1 Roger Darlington is a Member of Nominet's Policy Stakeholder Committee. Maureen Edmondson has now retired as a Board Member of the Food Standards Agency.

## 2. Minutes of the meeting on 21 July 2010, matters arising and progress on actions

2.1 Members **APPROVED** the draft minutes for signature by the Chair.

2.2 Members **NOTED** the current status of actions arising including:

- AP4 - A copy of the Consumer Expert Group's report on digital radio will be circulated with the weekly update once published.
- AP6 - A response to the letter sent to Ed Vaizey on broadband speeds thanked the Panel for its advice and stated that the Government will conduct a review of broadband. The Panel **DECIDED** to reply to the letter setting out the Panel's view on broadband. If possible the letters will be published on the Panel's website.
- AP 20 - Some potential new dates for the OII visit will be circulated to interested Members.

## 3. Panel discussion of approach to agenda policy items

3.1 The Panel reviewed the policy items for discussion during the day and discussed a number of key points which are reflected in the minutes below.

#### 4. Ofcom Governance Review

4.1 The Panel received an update on progress made with Ofcom's Expenditure Review Project and further considered the Panel's part in relation to Ofcom's spending and governance review and the paper developed by the Panel to input into the review. The important role of small businesses in the economy will be highlighted in the paper. Members will pass specific comments on the paper to the Advisory Team by Friday 17 September 2010. Once approved by the Chair the paper will be passed to Ofcom as part of the Governance review and the executive summary sent to Ofcom Board Members.

4.2 Members heard that the Government is conducting a review of consumer bodies and **AGREED** for the Panel Chair decide how best to input into the review. Members highlighted the benefits of a Panel consumer representation model and the innovative nature of the sector which requires a responsive consumer representation body.

#### 5. Options for Q3 and Q4 of Panel Workplan

5.1 The Panel considered a paper which reviewed the Panel's 2010/11 workplan, covering work already achieved, work committed to and suggestions for other areas of work to be focused on in the last half of the year. Members congratulated the Advisory Team for the progress made with the workplan to date.

5.2 Members considered the options for an additional substantial pro-active engagement project to be initiated in November 2010. After considering all the issues highlighted in the paper, Members **AGREED** to scope out a project, via a sub-group meeting, to consider what internet regulation consumers and citizens will expect in the future, possibly looking strategically at net neutrality and/or broadband speeds. In scoping this project the Advisory Team will be careful to ensure that it considers an aspect of internet regulation not being addressed by other bodies and that the balance of the project in relation to the Panel's other workplan commitments is right.

5.3 Following consideration of a number of options Members **AGREED** to monitor with engagement where necessary the following areas over the last half of the year:

- Net neutrality;
- Universal service (to be redefined to focus on the issues connected with the delivery of universal broadband);
- Non-geographical call services review;
- Broadband speeds; and
- Spectrum release.

5.4 Following consideration of a number of options Members **AGREED** to periodically review at Panel meetings the following areas over the last half of the year:

- Mobile coverage;
- Implementation of the new EU telecoms framework;
- Online copyright infringement;
- Switching; and/or
- Infrastructure reporting; and/or
- the planned new Communications Bill.

The Advisory team will make a judgement on which five of the above six areas can

be accommodated within the workplan by the end of September.

5.5 Due to progress made with a number of work areas and external changes, Members **DECIDED** to demote the following areas to no further engagement within the 2010/11 workplan, once existing commitments have been honoured:

- Digital participation;
- Ofcom's review of policy-making guidance;
- Ofcom's review of complaints handling and alternative dispute resolution (now part of quarterly consumer affairs update);
- Ofcom's digital dividend clearance project;
- Ofcom's review of automatically renewable contracts;
- Ofcom's review of wholesale local access; and
- Premium rate services (contact between advisory teams to be maintained).

## 6. Ofcom - NGB Wholesale Local Access (WLA) Market Review

6.1 The Panel **CONSIDERED** a paper which updated Members on Ofcom's project to review competition in the WLA market. The following points arose from the discussion:

- VULA (Virtual unbundled local access) will be a way of other operators gaining access to BT's NGA (next generation 'fibre' access) networks in the same way that service providers use LLU (local loop unbundling) to gain access to CGA (current generation 'copper loop' access) networks;
- there will be an economic limit to the number of operators wishing to become a competitor to BT and use VULA to access NGA networks;
- where BT does not deploy NGA, if economically viable other operators will be able to use sub-loop unbundling and access via ducts and poles to deliver NGA;
- Government initiatives to encourage investment in NGA will be key to reaching areas where investment is not economically viable;
- the remedies are likely to allow competition to deliver more choice and innovation for consumers (similar to the benefits seen by LLU) and provide a higher quality of service for consumers via NGA;
- Ofcom aims to give BT the confidence to further roll out NGA by setting out the regulatory approach in a clear manner, therefore improving reach where it is commercially viable;
- in relation to the final third an accurate impact assessment would help identify investment opportunities, however this is under the remit of Broadband UK;
- BT is not allowed to be discriminatory in charging operators for access to VULA and price will be restricted by competition; and
- Ofcom will be pro-active in understanding BT's pricing structures and will react to suggestions of discriminatory pricing.

6.2 The Panel gave the following **ADVICE** to Ofcom, it should ensure that the statement clearly:

- articulates the desired outcomes for consumers and links the identified benefits for consumers to the four remedies;
- articulates that the remedies will not directly address the issue of reach; and

- addresses the key consumer questions of “will I get access to broadband?” and “will I have the same choice of provider as I have currently if I choose superfast broadband?”.

6.3 Members **AGREED** that once the statement has been revised to take account of Panel comments it will re-consider the statement if requested to do so by Ofcom. Members **AGREED** to send Stuart McIntoch an email summarising the advice provided.

## 7. Ofcom - Non-Geographic Call Services Review

7.1 The Panel **CONSIDERED** papers which updated Members on Ofcom’s review of non-geographic calls services, including gathered evidence and options for intervention which Ofcom will issue for consultation at the end of October 2010. The following points arose from the discussion:

- it is clear that the current market structure is not working;
- it is clear there is a case for intervention to limit consumer detriment;
- Ofcom are looking at different ways to structure pricing to help consumers understand call charges attributed to different number ranges;
- Ofcom plans to rationalise the system to make number ranges simpler and distinct, increasing consumer recognition; and
- Ofcom hopes that through improving simplification and transparency competition will increase, which will lead to improvements, such as telephone operators including the standard call rate cost element within consumers’ bundled packages.

7.2 The Panel gave the following **ADVICE** to Ofcom, it should ensure that:

- the longer term strategy for non-geographic calls, including how NGA will affect call charges and plans to simplify the number range system, and the desired long term consumer outcomes are articulated in the consultation in a way which means something to consumers;
- the consultation sets out proposed remedies in relation to the strategic goals and is clear as to where the remedies are of value to competition and where they are designed to protect consumers directly;
- the consultation sets out any assumptions Ofcom is making about consumer behaviour in relation to the remedies;
- any short term interventions do not conflict with the desired longer term consumer outcomes;
- the system is simplified as much as possible, to limit customer confusion and the implications for consumers are considered carefully before increasing the amount of consumer information on call charges, which is likely to cause further confusion;
- it researches the impact of its proposed numbering simplification intervention on consumers, as well as researching how consumers will process call charge information proposed in relation to each of the remedies and what difference this will make to their behaviour;
- it considers whether services using non-geographic calls could be asked to sign up to a code of practice, perhaps via the Call Centre Association, covering issues such as advising customers of expected call duration. However notes that Ofcom hopes by exposing such issues consumers will put pressure on providers to improve systems; and

- it only considers a remedy of price capping once it is clear that there is a consumer protection issue as a result of the above research.

7.3 Members **AGREED** that it will continue to monitor Ofcom's work in this area and engage with Ofcom as appropriate to ensure that the Panel's concerns are addressed.

## 8. Ofcom - Online Copyright Infringement - Initial Obligations Code

8.1 The Panel **CONSIDERED** a paper which updated Members on Ofcom's changes to the draft initial obligations code on internet service providers (ISPs) following its consultation. The following points arose from the discussion:

- Ofcom will share a copy of the draft Code with the Panel prior to publication;
- the timetable for Ofcom's other work on online copyright infringement has been lengthened due to a recent Government decision on how the system should be funded and the need for industry to work through the implications of this;
- should Ofcom's intention to persuade ISPs to agree to sending a standard information pack with notification letters fail, it has a reserve power to mandate ISPs to comply;
- the situation regarding the liability of public intermediaries with open wi-fi remains complicated, however Ofcom is proposing a standard item in all notification letters to provide clarity using examples;
- the principles set out by the Panel in relation to the Appeals body will be set out in the Code. However Ofcom is likely to consult further on the set up of the Appeals body later as it falls outside the Code's remit; and
- Ofcom would like to engage with the Panel again in the future with regard to the facilitation of working groups to agree standardised notification packs.

8.3 Members **AGREED** that it will provide comments to Ofcom on the draft code once received.

## 9. Panel - Net Neutrality

9.1 The Panel **CONSIDERED** a paper which updated Members on the Panel's work in this area and contained a draft response to Ofcom's discussion paper. The following points arose from the discussion:

- that traffic management of some kind is required to manage congestion and access to time-sensitive services;
- network investment is key to ensuring network capacity, however ISPs may seek to recoup investment by requiring content providers and/or consumers to pay for prioritised quality of service;
- an audit of research undertaken by others to identify what providers are doing and identify the consumer and citizen impacts of net neutrality and traffic management would be helpful to inform the debate; and
- this approach to traffic management is likely to lead to differentiated services for consumers based on price. This could lead to citizen issues in relation to, for example, access to essential services.

9.2 The Panel **AGREED** to strengthen its response to Ofcom's discussion paper by:

- recommending that Ofcom widens its view to identify long term as well as short term consumer issues, and scope out the broader citizen issues in its statement;

- recommending that consideration be given to the effect of traffic management policies on small businesses;
- warning that transparency on traffic management practices as a solution may not be sufficient to guard against consumer and citizen harm due to consumer switching behaviour and the complexity of the issues;
- warning that the absence of evidence does not mean a lack of consumer and citizen harm and highlighting potential detriment or value which might accrue to consumers and citizens as a result of traffic management practices;
- identifying that more research to assess the consumer and citizen impacts of net neutrality and traffic management by Ofcom and Government is required. For example scenario work with consumers to identify attitudes to the choice of bespoke services versus guaranteed access to services and how consumers react to changes in their broadband speeds and how this affects their propensity to switch;
- recommending that Ofcom monitors the level of traffic management using clear parameters so that it can identify quickly when traffic management policies are likely to cause citizen and consumer harm; and
- proposing that Ofcom consider whether access to some online services which are essential should be guaranteed and identify what services should be included.

9.3 The Panel **AGREED** to respond to the European Commission consultation as well as the Ofcom discussion paper. Members **DECIDED** it would highlight its concerns regarding net neutrality and investment in NGA in its letter to Ed Vaizey regarding the Government's proposed broadband review. The Panel **AGREED** to consider whether to respond to the Infrastructure reporting consultation in relation to NGA and traffic management.

## 10. Panel round up discussion of agenda policy items

10.1 The Panel reviewed the policy items which had been discussed during the day and agreed any further actions as reflected in the minutes above.

## 11. Any Other Business

11.1 Roger Darlington is no longer able to speak at a Westminster Forum - Building 21st Century Broadband on 4 November 2010, therefore an alternative speaker will be identified.

11.2 Members will meet at lunchtime on Tuesday 12 October to start to plan the Panel's 2011/12 workplan. Further details will be communicated shortly.

11.3 The Chair is waiting to hear from Ofcom regarding the one year proposed contact extension of Members with contracts due to expire on 27 October 2010. Members will be updated as soon as BIS communicates its decision to Ofcom.

.....Chairman .....Date