

NOTE FROM COLETTE BOWE TO STEPHEN CARTER

Last Tuesday members of the Consumer Panel had a briefing on the likely content of the third Ofcom document on the telecoms strategic review (TSR). [REDACTED], [REDACTED] and [REDACTED] set out particularly how the Ofcom statement will stand in relation to the main points made by the Panel in our submission on the draft BT undertakings.

I imagine that you will have received a note on this meeting and possibly comments from your colleagues. However, I am writing now to make clear the Panel's concern that our submission has not been adequately weighed by Ofcom and to warn you in good time that the Panel will want to make these concerns known publicly once Ofcom has published its latest statement.

Our submission on the draft undertakings made three main points to Ofcom.

First, "Ofcom should specify the metrics by which it will judge the success of the agreement in terms of delivery to the consumer and the citizen (not necessarily the same thing). It is vital to set out at the beginning, in terms which are clearly understandable and measurable, how we will know if the policy has delivered for the consumer and the citizen in acceptable terms and timescales."

We were advised that Ofcom will not be setting targets because it considers that inappropriate – Ofcom cannot control outcomes and targets could be misleading and even distortionary – but Ofcom will use international benchmarks and other measures to assess the indicators that it measures.

Of course, we well understand the difficulties in selecting and assessing indicators, but Ofcom's current stance will not only make it difficult to assess whether or not the new settlement for BT is "working" – but also to assess whether Ofcom's own expectation of the rate of progress is well founded. Without some clear view from Ofcom about what it is expecting to see and by when, it will be difficult if not impossible for external observers to hold Ofcom to account for the effectiveness of its regulatory stance towards BT. We do not think this is acceptable and we shall have to say so publicly.

Second, "the new Equality of Access Board should include as a member someone who is able to be seen as a champion of consumer choice. The proposal is that the Board will have five members: a chairman who is a non-executive director of BT, three independent members appointed in consultation with Ofcom, and a senior BT manager. We would like to see one of the three independent members chosen with a view to his or her knowledge of and commitment to providing the consumer with choice and fairness."

We were advised that Ofcom agrees that understanding of consumer issues would be a useful set of skills to have on the EAB and that Ofcom is working with BT on briefing head hunters and will make this point to the company, but

we were told that, because the EAB will be examining the wholesale market, Ofcom does not consider it appropriate to nominate one member of the EAB as a consumer champion.

It seems to us that Ofcom's prime concern here is to satisfy the concern of altnets rather than citizens and consumers. The whole reason for having equality of access is to create a more genuinely competitive marketplace with a markedly better deal for customers and therefore there needs to be at least one independent person on the Board – ideally all three of them - who is seen to be committed to this outcome by virtue of his or her consumer experience and awareness of markets from a consumer perspective.

Third, "there should be an independent adjudicator to resolve quickly and (as far as possible smoothly) any practical 'on the ground' difficulties or differences in the implementation of the agreement. We have been impressed with the work done by Peter Black through the Office of the Telecommunications Adjudicator in respect of local loop unbundling (LLU) and we would like to see use of such a model in the wider context of delivering equality of access."

We were advised that Ofcom generally considers the LLU adjudicator to be a success but that, in the case of the equivalence provisions, there are already multiple processes for dealing with problems; in particular the EAB, Ofcom's duty to review the efficacy of the undertakings, and the normal dispute procedures.

We see our suggestion of an equivalence adjudicator as complementary to, and not a duplication of, the deliberations of the EAB. We envisage the Board focusing primarily on policy and processes. It is clear from the experience of the LLU adjudicator that often conflicts 'on the ground' benefit from a more informal, more 'hands on' intervention by an independent party committed to driving through practical agreements between the parties. Furthermore, in the event that the EAB rules between conflicting parties, the adjudicator would provide an obvious route of appeal.

I hope that this brief review underlines the importance that the Panel attaches to our observations on the draft undertakings and our belief that Ofcom has not adequately taken on board our views.

We believe that three more general points arise from this experience.

First, it has been our consistent view – clearly expressed to Ofcom – that throughout the whole TSR exercise much more emphasis has been placed on the supply side of the equation (ensuring increased access to the market place) than to the demand side of the equation (ensuring that consumers are empowered to make informed and effective choices). Everything we have heard about the TSR3 document confirms our view on this. Most especially, we are deeply disappointed to learn that Ofcom's statement on consumer strategy on telecoms is to be de-coupled from the coming statement and made as a separate statement rather later in the year. This gives all the wrong

signals as to the ultimate purpose of the review and how it can be best made to work for the consumer.

Second, although we have had a regular dialogue with relevant Ofcom colleagues at various stages of the TSR and even contributed to various workshops, when it comes to the actual content of Ofcom's public documents we are not given adequate warning of the likely content on a timescale that would enable us genuinely to influence this content. When we were seen last Tuesday, it was clear that the third TSR statement was already finalised and nothing we could say would have any influence on the text.

This raises a much wider question, which is about the way in which Ofcom is responding to our formal submissions. We are not satisfied that this is working as it should and I will be taking this up more formally with David Currie.

Finally, for the avoidance of doubt, please be aware that we will be making publicly known the disappointment expressed in this note about the content of the statement on the BT undertakings – unless of course the final version which I have asked for our staff to see today has changed from what we were briefed on last Tuesday.

COLETTE BOWE

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