

Department for Business Innovation and Skills

Consultation on proposed new duties for Ofcom on resilience: Secondary information

A: Require companies to report to Ofcom on risk assessments and emergency planning

B: Require companies to test emergency plans and participate where necessary in Government testing of national response plans for telecoms

**Response by the Federation of Communication Services
October 2009**

Introduction

The Federation of Communication Services [FCS] is the trade association for the communications services industry representing 300 companies that deliver fixed, broadband, IP, mobile and radio based products and services. A list of FCS members may be found in the members' directory on the FCS website- www.fcs.org.uk

FCS has responded to the Department's earlier consultation on the proposed new duties for Ofcom and welcomes the opportunity of replying to the current consultation on extending Ofcom's power to report on risk assessments and emergency planning.

We comment on the proposals from the perspective of FCS members who:

- deliver communications services to individuals and business customers, or
- form the critical national infrastructure, that is they are both customers of the telecommunications networks and of Ofcom as the spectrum manager

Within the consultation the term communications network could apply to the physical infrastructure that is under the ownership of BT, Virgin Media, the larger mobile communications networks and those smaller companies with national or local fixed or wireless physical infrastructure, including switches. Alternatively, if the term communications network has a consumer focus, i.e. it includes how a customer receives their bill, then the scope of companies affected includes both communications providers and resellers- several hundred in total. It is essential to clarify this point.

Although a data capture duty is being placed on Ofcom we would expect its application to be proportionate and not to place new and undue burdens on the companies involved. We encourage both the Department for Business and Ofcom to engage fully with all companies that are affected, including the smaller communications providers, should that be the case.

FCS members that contribute to the critical national infrastructure are particularly concerned to know how the information gathered by Ofcom is to be used, and, should the reported level of resilience be inadequate how this is to be changed and who will bear the cost. We believe that there is a role for Ofcom itself as the national spectrum manager to report on the measures it is taking to ensure certain access to spectrum for the critical infrastructure to ensure its resilience. We must reiterate our view that continuing

and certain access to radio spectrum is crucial for the functioning of critical infrastructure and availability of spectrum by a managed process must give necessary priority these essential services.

Question 1

Do you agree that Ofcom should have the power to require that electronic communications operators report to Ofcom on risk assessments carried out?

The Digital Britain project has reinforced the utility nature of telecommunications and the interrelationship with energy and other CNI elements to maintain the fabric of the UK economy and social life. As such there is an argument that telecoms should be aligned with existing National Risk Assessment processes and addressed in a similar way by a collaborative approach with Government, Ofcom and industry.

As the consultation proposes, we agree that Ofcom could collect the data, but acting as the conduit rather than the decision maker on the data interpretation. Undoubtedly this will be a lengthy project to establish, with new technical skills brought into Ofcom. The cost of this new administration must be kept to a minimum by engaging with existing work elsewhere in Government rather than re-inventing the wheel.

Question 2

Do you consider that Ofcom should have the additional power to require that further risk assessments be undertaken by relevant companies if those supplied are deemed insufficient? If so, how should this assessment process take place?

At present we are not convinced that Ofcom should be assessing the telecommunications risk assessments, but that these should be considered by collaborative approach with Government, Ofcom and industry. As such this project cannot be rushed and may best be aligned with the introduction of the European obligations.

Question 3

Should risk assessments be based on existing Government processes?

Yes

Question 4

Do you agree there should be a duty on relevant companies to provide information to Ofcom on their emergency plans?

We are not clear which companies might be within the scope of these obligations. Once this is answered then the scope of the requirements will require definition. Only after that can the provision of defined emergency plans be considered. It appears premature to place obligations on Ofcom and industry until these steps have been taken and may be better considered at a later date.

Question 5

Do you agree that there should be a duty on such companies to a) test emergency plans and b) participate in Government exercises as and when necessary to ensure overall resilience?

Until it is clear which communications companies are affected we are unable to comment

Question 6

Are there any other issues concerning the resilience of networks that you believe should be addressed in legislation?

Ofcom itself has a role to play in ensuring the resilience of national infrastructure through its responsibility as spectrum manager. The CNI sector relies on certain access to spectrum to fulfil its primary obligations, which include resilience. Government should provide guidance to Ofcom to ensure that spectrum is made available for this sector and that Ofcom itself should report accordingly.

Question 7

Do you think that the proposals in this consultation document are in line with the expected outcome of the Framework Review?

The consultation appears to indicate this.

Question 8

What do you think the economic impacts of these proposals will be upon your business and do you have any comments on the impact assessment?

Individual FCS members are unclear as to whether they may or not be affected. While each believes that they are complying with current obligations there is some concern about extra workload and costs associated with mandatory obligations. The costs associated with any additional obligations may have to be passed on to consumers.

Question 9

Are there any other points you wish to make in relation to the issues covered in this consultation?

Any new obligation on the private sector bears a cost. Such costs can be a disproportionate burden to smaller communications providers, distorting competition. As a competition regulator Ofcom should guard against this distortion.

As the spectrum regulator Ofcom itself should have obligations to report to Government on access to spectrum in support of the resilience of the CNI.