



**Select Committee on the European Union  
(Sub-Committee B)**

***Inquiry into Re-launching the Single Market***

Written Evidence

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## Memorandum by CBI (EUSM2)

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### Introduction

1. The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi, the CBI communicates the voice of British business around the world. As detailed below, the CBI considers that:

- The effective functioning of the Single Market is of paramount importance to UK business
- Following the downturn, implementation and enforcement are central to its development
- Positive engagement with the EU is required to benefit from the Single Market's potential
- Its completion is reliant on political commitment, a strategic approach and Better Regulation
- Any future activities should be targeted and the principle of subsidiarity must be observed.

### I The need to re-launch the Single Market

2. British business is a strong supporter of the Single Market and the many advantages and opportunities it provides. As a 30-country trading bloc, the European Economic Area (EEA) has strength on the global stage and the economic and social benefits for the EU's 20 million business and 500 million citizens of fulfilling the Single Market's potential are clear. The CBI is therefore committed to the five freedoms the Single Market today comprises.

3. Nevertheless, the recent economic downturn has highlighted the Single Market's susceptibility to economic nationalism. Similarly, 25 years after the project was first launched, barriers remain and it is still far from complete. It is therefore important that strengthened delivery of the Single Market - one of the EU's greatest achievements and the foundation of its recent economic success - is actively pursued to benefit industry and citizens alike.

4. In this context, the CBI welcomes national and EU policymakers' renewed focus on the Single Market, as demonstrated by Professor Mario Monti's recent report, 'A New Strategy for the Single Market,' and the European Commission's forthcoming Single Market Act. UK industry also considers that the Single Market should remain a focus of the Europe 2020 Strategy, the EU's new agenda for growth and jobs.

5. The effective implementation and proper enforcement of the existing body of EU legislation and regulation is, however, central to addressing today's challenges. Overseen by the European Commission, Member States have a responsibility to actively correct the current shortcomings of the Single Market and ensure a level playing field. The effective implementation of EU rules and avoidance of 'gold-plating' will reduce barriers to trade, improving business use and public perception.

6. The CBI supports the comprehensive approach set out in Professor Monti's report. Initiatives to build a stronger Single Market, generate consensus around it and achieve effective delivery are welcome. Any further EU actions must, however, be principles-based and evidence-led. UK business considers, for example, that the right to take collective judicial actions in consumer and competition policy is already adequately assured by existing Member State mechanisms and that there is no need for an EU-wide system. Similarly, any future EU-level activity in the digital arena must enhance companies' ability to market and sell goods and services across borders, thus enabling greater consumer access and choice.

7. With regard to the social arena, the diverse range of national labour market models in the Single Market is at present combined with significant EU regulation. Whilst improved implementation and enforcement is required, legislative revision, particularly of the Posting of Workers Directive, is unnecessary and the current balance must be preserved. Labour market flexibility is a key determinant of a competitive economy and activities in this area must continue to respect the principle of subsidiarity.

## **II The role of the UK**

8. British business remains fully supportive of the pursuit of the Single Market – to open, free and undistorted cross-border trade. It is estimated that 52% percent of UK trade, half of inward investment and nearly 3 million jobs are linked to the EU. Similarly, some 300,000 British businesses trade goods and services across Europe, generating prosperity and growth at home and on the global stage. Raising companies and citizens' awareness of these achievements should be a priority.

9. The CBI is equally committed to constructive relations with the EU. Our members are ready to work with policymakers to deliver their priority goals. Member States governments too must strive for early engagement with the EU Institutions. Whilst protectionism undermines the foundations of the Single Market, the UK should work towards its completion - strong in the defence of national interests, including its global leadership in financial services, but equally ready to take the lead.

## **III Institutional elements**

10. Effective delivery of the Single Market requires a partnership approach, involving all actors, public and private. Adequate resources and political will are required for the European Commission to fulfill its watchdog role and for Member States to successfully address the current patchwork of implementation. Similarly, the availability and efficiency of problem-solving and dispute-resolution mechanisms for companies and citizens, for example SOLVIT, must be enhanced.

11. UK business supports a more strategic and integrated approach to the Single Market and greater coherence between the many policy areas it now encompasses. Any future EU-level activity should be targeted, proportionate and developed in cooperation with industry. In order to fulfill the Single Market's potential, the principles of Better Regulation - simplifying legislation, cutting administrative burdens and improving Impact Assessments - must be fully embedded in all EU and national decision-making processes.

#### **IV. Sectoral aspects**

12. The below sectoral aspects notwithstanding, UK industry considers that, in order to pursue the completion of the Single Market, particular attention should be paid amongst others to:

Further liberalising the network industries, particularly electricity, gas and transport: Despite significant policy initiatives in these areas, notably the third energy package, considerable challenges in opening up and interconnecting cross-border markets persist. Coupled with intelligent investment in infrastructure, continuing this process will maximise business opportunities, enhance environmental performance and improve consumer choice.

Renewing the commitment to free trade and implementing a robust competition policy: The reinforcement of multi- and bilateral trade relations will strengthen the EU's external competitiveness, whilst internally the tools of competition policy should be used effectively to foster economic growth.

Repairing the financial system in a coordinated manner and at the appropriate level: Reforms to financial regulation, including supervision and remuneration, must be developed with due regard for the national and global context to re-establish a strong European economic model.

Promoting entrepreneurship, as well as supporting innovation and the protection of IP: The continued pursuit of an SME-friendly environment, improved investment in R&D and strengthened protection of IPR, including the EU Patent, will enhance the Single Market's development.

#### *13. Tax Coordination*

UK industry is firmly committed to retaining national fiscal sovereignty. Whilst recognising the challenges posed by the different corporate tax systems in the Single Market, EU-level harmonisation, particularly the creation of a Common Consolidated Corporate Tax Base (CCCTB), is therefore not considered the best way of dealing with cross-border issues. The CBI instead supports greater international coordination to reduce compliance costs and double taxation, which will allow companies to optimise intra and extra-trade.

#### *14. The Services Directive*

The Services Directive has the potential to increase competition, bring down prices and improve choice. These benefits will, however, only be realised through rigorous national implementation and enforcement by the European Commission. Concerns remain that the pace and quality of transposition is uneven – Points of Single Contact are, for example, now operational, but language barriers remain. In collaboration with industry, the 'mutual

Memorandum by the City of London Corporation—Submitted by the Office of the City Remembrancer (EUSM3)

evaluation' process and better communication of the Directive's opportunities are therefore crucial.

15. *The Digital Agenda*

The creation of a Digital Single Market is central to the UK and Europe's future economic success. A significant sector in its own right, the knowledge economy is a driver of innovative growth and jobs. Developing a world-class digital and communications infrastructure by, for example, extending the reach of broadband and incentivising investment in next generation access can enhance competitiveness both within the Single Market and on the global stage. A full dialogue with providers and users and proper liberalisation are key to achieving these goals.

**Conclusion**

16. Following Professor Mario Monti's recent report, the CBI reiterates British industry's support for the Single Market and the many advantages and opportunities it provides. Nevertheless, 25 years after the project was first launched, barriers remain and it is still far from complete. UK business therefore welcomes initiatives to achieve effective delivery of the Single Market, but stresses that implementation and enforcement of existing EU legislation and regulation are central to its development. Any future EU actions should be targeted and respect the principle of subsidiarity, notably those expected in the forthcoming Single Market Act.

CBI Brussels Office  
*September 2010*

**Memorandum by the City of London Corporation—  
Submitted by the Office of the City Remembrancer  
(EUSM3)**

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**Introduction**

1. The City of London Corporation welcomes the opportunity to contribute to the Committee's inquiry into the EU Single Market. The Corporation's work on EU financial services matters is informed by its International Regulatory Strategy Group (comprising representatives from a variety of industry sectors including investment banking, asset management, insurance, legal and accountancy services, exchanges and market infrastructure), which replaced an earlier EU Advisory Group, and by the City Office in Brussels set up to act as a bridge between the City of London, EU decision-makers and key figures elsewhere in the EU.
2. Many City firms, institutions and trade bodies have been playing an active part in helping to achieve a single European market for financial services from their sectoral standpoints and, to this end, the City Corporation's particular focus has been on wholesale financial services. More generally the City has a continued and growing

interest in the wider better regulation agenda and for some time been seeking to highlight the importance of thorough and detailed scrutiny of EU legislation by Parliament, in addition to trying to ensure that directives which emanate from the EU are both principles-based and proportionate.

3. The City Corporation is not in a position to respond fully to all the questions posed in the Committee's Call for Evidence but the following paragraphs reflect the City Corporation's views on issues of particular interest to its activities.

### **Regulatory Change**

4. Confidence in the Single Market economy needs to be rebuilt but there is also, however, significant public and political pressure across the EU for better regulation and greater supervision of financial services. The two need not be mutually exclusive. Both should form part of the framework for realising opportunities and restoring confidence since excessive fiscal policies could deter potential entrepreneurs and innovators that the EU economy needs in order to continue its recovery.
5. Changes in the financial services sector are plainly necessary and are underway. The industry supports this. These changes need to cover both the sector's ethos and understanding of its role, and how it is regulated. The economic crisis required massive support for some parts of the financial sector from governments. There is a clear valid public policy interest in seeking to ensure that the sector is reformed and such intervention is not required again. The new regulatory framework should be designed to bring stability to the sector whilst promoting competition, and to encourage integrity and the regaining trust of investors and consumers. The strategic goal must be to create an environment for growth and prosperity through economic openness and the development of the Single Market.
6. When evaluating regulatory proposals, therefore, it is essential to consider how the regulation is actually likely to be applied in practice, and its impact on the economy as a whole. Policy based on the assumption of a perfect market, with regulation carried out by faultless regulators, can lead to over-regulation or over-detailed regulation, which could, in turn, harm the Single Market and global business. What is important for the Single Market is that the financial sector operates on a stable basis within a competitive environment. Failed firms must be able to leave without undermining the stability of the sector and new entrants that meet the regulatory requirements must be able to enter. Measures that restrict entry to a national or regional financial system, whether or not the entrant is domiciled there, must be resisted.

### **Supervisory Change**

7. The Single Market for financial services has not yet been achieved across the EU. In this regard, the development of a single rule book and the ability of the new European Supervisory Authorities to promote and require consistent implementation are welcome.
8. The crisis has shown the importance of systemic oversight and the need to join the supervision of individual institutions with the macro oversight of the system as whole.

The City supports the steps being taken in the EU to establish a European Systemic Risk Board within a European System of Financial Supervision and the progress being made internationally better to coordinate the activities of the IMF and the Financial Stability Board. These initiatives will work to the benefit of the Single Market.

### **International Collaboration**

9. There are strong arguments that efforts to regulate within the EU need to be more collaborative and recognise that strengths and diversity of the EU wide financial services economy in different member states. For example, the debate surrounding the Alternative Investment Fund Managers Directive has highlighted that what works best for one member states could harm another, and vice versa. Also, those member states lined up either for or against the directive often have differing interests amongst themselves, thus highlighting this diversity. The push for a "social market" should not ignore this diversity.
10. The "social market" approach, which is prevalent in the EU, currently highlights a tendency to regulate and tax in favour of greater state-sponsorship and control of industries. This philosophy does not take into account the diversity and historical growth of some EU member states' economies and seems poised to counter the so-called 'Anglo-Saxon model' which until recently was widely praised for contributing to the success of the single-market economy.
11. EU regulatory and fiscal reform that is not a result of collaboration between member states may prove detrimental to the UK and consequently the EU economy – if London, as Europe's leading international centre, suffers economically, this will be to the detriment of the European economy.
12. The balance of the world economy is changing and London has always thrived on engagement with international markets. Links with the Gulf, Central Asia, Latin America and increasingly Africa remain essential and are beneficial for the whole of Europe, not just the UK. There are clear opportunities for City firms to engage in these markets in areas such as infrastructure finance, the development of new energy resources, green technology/low carbon projects, insurance and risk management, and sovereign and corporate wealth management. In addition, London can also offer the training/qualifications and professional standards work that underpins all this. London is well placed to act as the hub of a global wheel and working for the benefit of the wider European economy in co-operation with new financial centres as they emerge and grow.
13. The City would argue against attempts to restructure the EU economy in a way that does not acknowledge the continuing importance of the financial services industry. This could lead to long-term decline Member States' and the Union's global competitiveness, particularly in the face of increased competition from growing financial centres in Asia-Pacific.

*September 2010*

## **Memorandum by the European Trade Union Confederation (ETUC) (EUSM8)**

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### **Single Market Act – ETUC Submission to the House of Lords European Union Committee**

1. The Commission will publish a note on the Single Market in late October. This note examines key issues of interest to trade unions in Europe.

#### **Background**

2. It will be recalled that the President of the European Commission invited former Commissioner, Mario Monti, to examine how to strengthen the Single Market in the EU. This was because of concerns that in the economic crisis there were signs of member states seeking to renationalise areas of policy and go forward in protectionist ways. Monti was also asked to look at ETUC concerns about the way the four freedoms of the single market (freedom of movement of labour, goods, services, and capital) impact on trade union fundamental rights, especially collective bargaining and strikes.
3. In the event, Monti's report recognised clearly the problem clearly that trade union rights could be affected adversely by the single market. He was very aware of the implications of recent judgments in the European Court of Justice (Laval, Viking, Rueffert and Luxembourg) and recognised the ETUC's concerns.
4. He was sceptical about one ETUC demand – that a Social Progress Protocol (SPP) should be included in the treaties, as he saw no prospect of a major revision of the treaties in the foreseeable future. The Irish Government had tried and failed (mainly because of UK opposition) to secure the SPP in their protocol, which enabled them to ballot again on the Lisbon Treaty. There was still strong opposition in certain member states.
5. Monti's proposed solution to our problems were for all relevant single market legislation to include "Monti II" clauses which would insist that the four freedoms respect the fundamental rights of workers. This is the formula he had used as an EU Commissioner in 1999 on the legislation on freedom of movement of goods.
6. Why? Because following the Laval and Rueffert judgments in the ECJ, unions cannot, currently, enforce collective agreements where the issue in dispute concerns categories of migrant workers working below the recognised terms. Those cases established that strike action – lawful under national law – could be unlawful under European law if it impeded the free movement of labour.
7. To give an example, there is a comprehensive union agreement with the Olympic Games authority covering the site in East London which specifies rates of pay required from contractors and sub-contractors. If, say, a Polish contractor tendered for a

contract and insisted that he would pay only the national minimum wage, not the much higher rates in the collective agreement, the ECJ might well set aside the agreement and outlaw any strike action against the Polish contractor.

8. The Monti clauses are a signal to the ECJ that agreements and fundamental rights should be respected by the ECJ in areas where the free movement provisions and union rights might collide.
9. The ETUC welcomed Monti's sympathetic analysis. We still press the case for a Social Progress Protocol - and a revision of the Posted Workers Directive to ensure that migrant 'posted' workers receive equal pay to indigenous workers. We were pleased to see the proposal for Monti II clauses although there are questions about what practical difference they might make given the existing Monti clause in relation to goods and a similar clause in the Services Directive.

### **The Commission's forthcoming paper**

10. At the time of writing this note, the Commission paper is still work in progress. It is known that Business Europe and some countries (notably the UK and Sweden) are lobbying hard about against any measures which strengthen the social dimension of the single market. In their view, the single market / free trade are a good thing in themselves and any social consequences should be a matter for national consideration. In effect, the UK Government is rejecting the idea of Social Europe, the single market with a social dimension, the combination which Jacques Delors used to persuade European trade unions to support the single market in the 1980s. Without a social dimension, the UK needs to recognise that support for the single market will recede. With the proviso that there is an effective social dimension, the ETUC continues to support the single market
11. The UK Government needs to be aware that this is not a narrow point. It is related to the acceptance of migrant labour by the workers of the host country. It is important that migrants are not seen as people undercutting rates, if we are to avoid hostile, perhaps racist, reactions. It is important, too, that unions are not prevented from seeking equal pay and treatment for migrant workers; otherwise existing union support for the single market and free movement will be placed in jeopardy and protectionist forces will be strengthened.
12. Lobbying by the ETUC, including the ETUC raising this issue with President Barroso at a meeting on September 29 and at a separate session with Commissioner Andor, is aiming to secure, at the minimum the Monti proposal for "Monti II" clauses. If we are successful, it will still not meet our demand for a SPP (which could be attached to the Croatian accession treaty) nor for a revised Posted Workers Directive. On this last point, the ETUC is pressing the Commission to make quicker progress.

John Monks, General Secretary  
European Trade Union Confederation

## **Memorandum by Microsoft Ltd (EUSMI)**

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Thank you for the opportunity to contribute to the House of Lords Inquiry into the EU Single Market. As a multi-national technology company with significant investments in the UK and across Europe, Microsoft welcomes the Commission's Digital Agenda for Europe as a bold roadmap for action. We share the European Commission's view that technology is an enabler for economic growth, job creation, sustainability and social inclusion.

We have chosen not to respond to all of the points raised in the Call for Evidence, but instead have concentrated on the Digital Agenda and a significant aspect of this; the emergent phenomenon of cloud computing. With the economic opportunities this growing technology affords, a review of the Single Market and the Digital Agenda is timely and opportune.

### **The Growth of Cloud Computing**

Cloud computing is a new way for business and consumers to access software and services like data processing, email or data storage. Businesses and consumers will increasingly have their current computing (where data is stored on the computer on the desk) complemented by software and services delivered and provided over the internet (from data centres run by a third party). This transformation will see many more applications and services being made available for businesses and consumers. Businesses will increasingly be able to pay for the technology they need when they need it rather than having to invest upfront in capacity that may only be used infrequently at times of high demand.

This newer model of cloud computing presents the possibility of a transformational shift in how governments and businesses of all sizes, as well as individuals, access and use IT.

There has been some preliminary work on the general benefits to the economy and economic growth that cloud computing can deliver. IDC in its October 2009 survey found that, even from a fairly small starting base, the benefits of cloud computing could be significant adding £11bn in net new businesses revenues to the UK economy by the 2013. Prof. Federico Etro of the University of Milano-Bicocca and Intertic is one of the leading European academics who has written about the potential economic benefits of cloud computing. In his paper for the 2010 World Economic Forum, 'The Economic Consequences of the Diffusion of Cloud Computing' he has calculated that cloud computing in the UK could help create up to 240,000 jobs in the short term and 35,000 new SMEs over the medium term. Of course these figures are predicated on the UK being a leading early adopter of cloud computing and excludes the public sector and financial services.

Cloud computing also presents opportunities for European Small and Medium sized Enterprises (SMEs) both as innovators of Cloud computing applications, and as users that benefit from the greater flexibility and reduced business risks available through Cloud

computing services. There are 4.8 million SMEs in the UK, accounting for 97% of all firms and 13.8 million jobs -- they are the “engine of growth” both in the UK and across Europe. These essential enterprises stand to benefit both as users and creators of cloud services, reducing costs.

UK/EU governments have the potential to become significantly more efficient, transparent, accountable and accessible. Cloud computing also could address pressing social challenges, including facilitating the delivery of public health care and education, especially in remote areas. And because consolidated data centres will use renewable and other environmentally friendly energy sources, these developments also can help reduce overall energy consumption and advance governments’ green initiatives.

The Cloud promises efficiencies and cost-savings for a wide spectrum of ICT users, and economic opportunities and growth for Europe and its SMEs in particular; therefore the Commission’s plan to develop an “EU strategy for Cloud computing” is among the most important elements of the Digital Agenda.

### **How can the Single Digital Market help achieve economic growth through cloud computing?**

There are a number of different changes required to the UK and EU’s existing digital infrastructure and supporting legislation in order to promote the adoption and growth of cloud computing. We have chosen here to not write about each one in depth, but to try to summarise the changes that we believe would be beneficial, both for the companies that will provide cloud computing services and for the consumers and businesses that will use them.

### **The flow of data across borders**

The cloud computing model means that data will be continuously transferred and hosted across borders and regions. Whilst this data transfer will be performed on a global scale, the Digital Single Market will be extremely helpful in facilitating this process. Therefore, it is important to resolve conflicting data access, data retention and data protection rules, and related governance issues.

Data Protection Because some national privacy regulators are apt to assert jurisdiction wherever a cloud service is offered, service providers can find themselves subject to the privacy and data protection rules of multiple jurisdictions, which often have not been harmonized sufficiently and can result in different obligations. Also, policymakers must closely weigh the relevant factors of the equation: to achieve maximum economic benefit from the cloud, there is a greater need for data to be transferred efficiently and freely across borders between and among providers and users.

Data retention The implementation of the Data Retention Directive varies across Member States. For example, the scope of the obligations to retain communications data and retention periods -- both core elements of the Directive -- vary from country to country. Cloud service providers are therefore faced with potentially conflicting obligations, which frequently manifests when they receive competing claims from Member States asserting jurisdiction.

Security Divergent European security mandates arising under data privacy laws subjects cloud service providers to an array of potentially inconsistent national data security rules. Further, in addition to the general restrictions on transfers of personal data under data privacy regimes, some public sector bodies and businesses may not be permitted to host their information systems or communications data outside their home country. This can result in cloud services providers being required to maintain multiple in-country data centres in order to provide services to customers that are subject to such requirements.

Government/law enforcement Multiple jurisdictions frequently have interest in a single matter, leaving cloud providers facing competing claims for access to communications data. As current mechanisms for resolving such issues are inadequately harmonized, providers can find themselves in an untenable position. A further and important consideration is that the human rights of users of cloud services must be reconciled with competing claims for access to data to investigate and prevent crime.

Telecommunications Software-based communications solutions are increasingly serving as outright substitutes for more traditional communications, particularly telephony. But because traditional telecommunications regulations often fail to neatly fit software and IP-based technologies, it again can be difficult to know when and to whom these regulations apply. In practice, these existing regimes are not well-suited for cross-EU services that are provided “in the cloud” as they are still focused on national legal jurisdiction.

### **Ubiquitous Broadband Access**

Microsoft shares the Commission’s desire in the Digital Agenda to ensure that all citizens will be able to enjoy the benefits of competitive, high speed broadband services. Ubiquitous and affordable access to the Internet is a key foundation for the new digital economy, enabling ever increasing benefits to be extended to all citizens. Ultimately, cloud computing can only deliver its full economic benefits to business and the public if there is affordable access to high quality, high speed broadband both down and up-stream. The Commission’s strategies for broadband rollout are all-encompassing: stimulate private investment, make carefully targeted public investments, and improve spectrum allocation.

Although we welcome and encourage the public policy focus on the importance of delivering broadband through fibre, wireless is also crucial to ensuring that the benefits of cloud computing will be widely available – including in remote and rural areas. The key bottleneck for the deployment of wireless technologies is the lack of available unlicensed spectrum suited to wide area coverage. Microsoft would urge a universal approach to universal access. Government and regulators can assist in achieving universal access by encouraging radically more efficient use of spectrum.

Microsoft believes that the Digital Agenda and a digital Single Market are crucial to the on-going economic development of the UK and Europe. New technologies such as cloud computing can provide significant economic and social opportunities for governments, business and citizens, but in order to take advantage of these opportunities, government needs to address questions relating to digital infrastructure and the legal framework that supports technology. We would be pleased to answer any questions that this document may have raised, and hope that this submission is helpful to the work of the Inquiry.

Government Affairs Manager  
1 October 2010

## Memorandum by Ofcom (EUSM6)

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### Section I Introduction & Executive Summary

#### Introduction

Ofcom welcomes the invitation to submit evidence to the House of Lords European Union Committee's inquiry into the EU Single Market, and in particular on the new Digital Agenda. As the United Kingdom's independent regulator for the communications sector, Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 is:

- to further the interests of citizens in relation to communications matters; and
- to further the interests of consumers in relevant markets, where appropriate, by promoting competition.

As the communications regulator for the United Kingdom, we are the appointed National Regulatory Authority (NRA) for the purpose of applying the current EU Regulatory Framework for communications. We are also the UK's spectrum management authority (interacting with other authorities and the European Commission on cross-border spectrum issues). Broadcasting and audio-visual content distribution are also subject to specific EU legislation – notably the Television Without Frontiers Directive and the Audiovisual Media Services Directive which came into force in December 2009. Again, Ofcom has specific responsibilities to enforce certain regulatory requirements in this area. Therefore, Ofcom is exposed to the 'sharp end' of the operation of existing rules in these sectors designed to promote the development of the single market in communications services.

Ofcom's duties and responsibilities are partly determined by EU and international policy and legislative developments, which can define and shape what we do and how we do it. For example, our decisions on economic market regulation are subject to European Commission scrutiny and we work with the Commission and other regulators in the pursuit of closer harmonisation of regulatory approaches across Europe, formerly within the ERG and now under the newly formed Board of European Regulators for Electronic Communications (BEREC). To assist the Committee in their inquiry on the Single Market, and specifically on the Digital Agenda, we have set out background information which we hope will help Committee members better understand the progress to date in achieving a single market for electronic communication.

#### Key messages

There have been major and sustained efforts to create a European single market for communications services. There has been a substantial degree of political support and 'buy-in' from EU institutions and Member States to this goal, and in consequence a strong and (largely) coherent set of legal instruments have been developed.

There is a clear consensus that this has delivered significant benefits in relation to growth, innovation and competitiveness for the EU as a whole and the UK in particular.

Sectoral regulators, usually referred to in this context as ‘National Regulatory Authorities’, have been key agents in opening markets to competition and protecting consumers. The role of regulators has been strengthened over time by EU legislation, including clarifying their arms-length relationship with governments.

Compared with some other sectors, the communications sector is now largely ‘open’ – direct barriers to trade and market entry have been removed throughout the EU. But the focus of the EU institutions is now shifting to two areas:

- How to improve the quality of regulatory intervention conducted at a national level in support of the single market; and
- How to address any remaining perceived weaknesses of the single market for communications.

On the first of these, a particular area of attention has been the question of the respective role of, on the one hand, the Commission, supported as necessary by EU-level agencies/institutions and, on the other hand, national regulatory authorities in delivering a high standard of regulation.

On the second, a good sense of where the Commission sees the remaining problems can be obtained from its recent ‘Digital Agenda’ strategy. This contains an interesting mix of proposals which can be roughly characterised as follows:

- Capacity building measures, such as efforts to promote a ubiquitous broadband infrastructure, and to increase the flow of R&D, skills and training through the ICT sector;
- Measures designed to increase consumer confidence in the outputs of the communications a Single Market, for instance by addressing concerns about abuses of privacy in the use of personal data; and
- Measures designed to address sources of structural weakness for communications industries in Europe, for instance through the creation of new models of distribution of content.

One point to note is that these proposals, although designed to promote a single market, clearly go well beyond the traditional focus of single market interventions (i.e. addressing direct barriers to trade and investment). This vision of a single market for communications reflects the shift in emphasis towards a common industrial policy for the communications sector in the EU, and a general ‘raising of the game’ of communications industries to a higher common standard of productivity and competitiveness.

We do not yet know to what extent the Commission will get support from the other EU institutions for its Digital Agenda vision, or indeed what specific legislative proposals may be brought forward. Nevertheless, we believe the Digital Agenda is a timely and far-sighted strategic framework which is central for the continued development of ICT economies in the EU. In particular, we applaud that the Commission, along with the other EU institutions, recognises the central importance of the communications sector as a motor for economic

growth across the continent. However, the challenge for policy-makers and legislators is turning the ambitious goal articulated in the Digital Agenda into reality.

In this regard, we strongly believe that national regulators, like Ofcom have an important role to play in ensuring that regulation of our sector is applied in a way which helps, not hinders this objective.

## **Section 2: The Single Market in Communications Services: An Overview ICT Strategic Importance**

In our evidence to this Committee's inquiry on the European Commission's review of the Single Market in 2007, Ofcom highlighted that the markets we have regulatory responsibility for sit within the overall 'ICT' (Information and Communications Technology) sector which is regarded as strategically highly significant for Europe. In particular ICT is seen as a high-growth sector and one in which Europe can realistically expect to retain a strong comparative advantage.

Telecommunications is regarded as both important in its own right and also an important input market to the wider ICT sector – the availability of high quality telecoms networks improves attractiveness of regions for inward investment, stimulates ICT diffusion and hence contributes to productivity improvements.

For these reasons, the ICT sector as a whole and telecoms in particular have been the focus of considerable attention at EU as well as national level over the last thirty years. This attention has increased somewhat in recent months however, culminating in Commissioner Kroes's statement of 17 May when presenting the new Digital Agenda that *"Europe's digital economy is crucial to economic growth and prosperity. ICTs and high speed internet are as revolutionary in our lives today as the development of electricity and transport networks were over a century ago. But we need support for further internet development so that all citizens can benefit from the digital economy."*

### **Emerging Single Market**

Most national telecoms markets were traditionally controlled by a statutory monopoly. From the 1990s onwards, EU legislation has abolished such natural monopolies and subjected markets to increasingly sophisticated regulatory interventions designed to promote effective competition. This has been seen as a necessary step to create an open, dynamic and competitive sector which in turn creates the necessary pre-condition for vibrant content, applications and services markets.

The UK has been both a consistent supporter of liberalisation and an early adopter of many measures designed to promote effective competition – for instance, the principle of an independent regulator, the adoption of cost-based interconnection, the use of number portability and most recently the introduction of Functional Separation of the incumbent's wholesale and retail activities.

Much time and effort has gone into seeking to measure the direct benefits of liberalisation. There is a rich and complex literature on this subject and as always with such exercises it is difficult to say with certainty exactly what factors have made the largest contribution. But

there is broad agreement that liberalisation has contributed directly to growth, has reduced prices and encouraged greater innovation.

Throughout the negotiations to revise the Electronic Communications Framework, the Commission argued that, in economic terms, the telecoms sector is one of Europe's most important, with annual turnover of around €290 billion, and around 4% of the jobs in the Union.

Similarly, the UK has welcomed parallel efforts to liberalise the cross-border distribution of broadcasting and audiovisual content, something which became possible as a mass-market proposition with the development of commercial satellite broadcasting in the late 1980s. Under the TV Without Frontiers Directive (first adopted in 1989), firms are free to distribute satellite TV throughout the EU from a single country of origin. The UK economy has benefited directly from the decision of many firms to locate their broadcasting activities in this country. Ofcom licences some 865 channels, of which we estimate that at least 200 broadcast principally into other Member States. The TV Without Frontiers Directive is in the process of being updated through the Audio-visual Media Services (AVMS) Directive, which seeks to extend the 'country of origin' principle to new types of on-demand content services.

### **Section 3: The Revised Framework for Electronic Communications.**

The EU Framework for Communications provides the basic mechanisms that ensure open markets and competition in telecommunications networks and services. The current Framework dates from 2002, but an ongoing review led to political agreement on a revised Framework package in November 2009. The UK has until May 2011 to transpose the revised Framework into UK law. The revisions covered a large number of issues, but there were three key themes.

*Consistency of regulatory remedies:* The Commission identified areas of inconsistency in the application of the Framework by different Member States, in particular in the way that National Regulatory Authorities applied 'remedies' designed to ensure open access to bottleneck facilities controlled by incumbent telecoms operators. This means that an operator like BT which seeks to offer services to businesses seamlessly across Europe potentially may face the situation where in one or more Member States the necessary remedies are missing or ineffective.

The Commission initially proposed two solutions to this problem – a direct veto for itself over defective remedies, and the creation of a new European Regulatory Agency of some 140 persons to promote best practice in remedies design and assist the Commission in the application of the latter's veto power.

However, whilst there was broad support in all political institutions and from NRAs themselves to the idea of promoting greater consistency, there was less of a consensus that these two measures were a proportionate response to the scale of the problem being encountered. The eventual compromise involved the Commission getting less than it wanted on the veto, whilst the idea of a new EU Regulatory Agency was replaced with a remodelled college of the national regulators – BEREC – which was to be supported by a small dedicated office in its tasks. To BEREC now fall the tasks of advising the Commission on harmonisation measures and commenting on national remedies which the Commission deems problematic.

At the same time, another concern which had been raised – that certain national regulators might be susceptible to political interference, particularly where the government retains an equity stake in the national telecoms incumbent – was addressed by strengthening the provisions on the political independence of national regulators.

Ofcom supports what we see as pragmatic solutions to the ‘consistency’ problem, in part because we believe that collaboration between regulators is a better model for developing regulatory best practice than the ‘command and control’ model implied by the Commission’s initial proposals. In particular this allows for experimentation and review of differing regulatory approaches. Whilst the challenges in other sectors may of course be different, we note that this model of a ‘regulators college’ may be seen to have value in other sectors where the Commission is seeking greater consistency of regulatory treatment of common problems.

*Spectrum liberalisation:* The increasing demand from many quarters for radio spectrum has led the Commission to adopt a policy of ‘spectrum liberalisation’ – removing restrictions on the service or technology that can be associated with a particular band of spectrum in order to facilitate the best and most flexible use. Some specific proposals along these lines were included in the new package and although these were somewhat watered down in the final version, they nonetheless give a strong impetus to the EU to move in what we regard as the right direction.

*Consumer empowerment and protection:* The Commission recognises that new telecoms technologies create many new legitimate business opportunities but also scope for abusive practices which harm consumers. NRAs received strengthened enforcement powers under the revised package to address such abuses. This was complemented by a range of measures designed to promote greater transparency by market actors (for instance in relation to hidden restrictions on services). The general philosophical approach is one which (a) allows for strengthened enforcement against ‘bad actors’ in the market; (b) empowerment of consumers to make effective choices themselves, thus constraining the market power of providers; and (c) a safety net of ‘universal service’ rules to protect the vulnerable.

Overall, Ofcom believes that the final version of the package represents a very good outcome for UK consumers.

#### **Section 4: The New Digital Agenda**

Following adoption of the Revised Framework and the arrival of a new College of Commissioners in February 2010, there has been a renewed focus within the Commission on the communications sector, with the Commission keen to highlight the growing importance of the digital economy/society (while warning of the risks posed by fragmentation of the single market).

After months of extensive consultation with Member States governments, National Regulatory Authorities and stakeholders, Commissioner Kroes unveiled her new Digital Agenda to replace the pre-existing i2010 strategy.

One of President Barroso’s seven flagship initiatives, the Digital Agenda sets out the issues which the Commission believes should be a priority for the sector and serves as the

umbrella for their work programme over the next five years. It identifies existing barriers to maximising the value of ICTs to promote Europe's growth and associated goals, sets out ambitious targets, and thirty-one legislative proposals as well as a long list of complementary non-legislative actions to pursue over the next four years. To quote European Commission President José Manuel Barroso in his State of the Union address, 7 September 2010, "*Half of European productivity growth over the last 15 years was driven by information and communication technologies. This trend is set to intensify. Our European Digital Agenda will deliver a single digital market worth 4% of EU GDP by 2020*".<sup>2</sup>

An ambitious and comprehensive strategy, it covers not just the competences of DG Information Society but also those of related Directorates. For example, the Agenda includes proposals to deliver a single market for content (addressing issues over copyright which sit with DG Internal Market Commissioner Michel Barnier) while also establishing a robust legal framework to encourage online transactions (addressing issues vis-à-vis data protection and privacy which sit with Commissioner Reding in the Justice, Fundamental Rights and Citizenship portfolio). The Digital Agenda should therefore be seen as a horizontal strategy, with the full backing of President Barroso, and managed by Commissioner Kroes.

Within the agenda there is clearly an appetite to:

- promote a stronger European content market, with potentially far-reaching reform of **copyright law**, fostering pan-EU licensing alongside greater action on IPR enforcement.
- create greater **confidence and trust in cross-border transactions** with proposals for a Code of Online rights and an EU Online Alternative Dispute Resolution scheme
- promote **digital literacy**, including the creation of EU wide indicators.
- reform **data protection** legislation relevant to this sector, with continued work on online targeted advertising
- reform the process for EU **standards** setting and interoperability which some in the Commission see as an overly long and complex process, divorced from policy and market realities.

While the Agenda overall constitutes a shift in focus from networks to services, many of the issues identified above will take some time to address. In the short term, Mrs Kroes has concentrated on addressing some remaining 'outstanding issues' in relation to telecommunications infrastructure.

We believe a series of linked announcements made in September this year clearly indicates Commissioner Kroes's intention to tackle outstanding network issues. The Broadband Strategy incorporates one of the Digital Agenda's principal and most ambitious objectives – 100% basic broadband coverage throughout the EU by 2013, with a long-term view of achieving 100% availability of 30Mbps and 50% high-speed coverage at 100Mbps or more by 2020. Commissioner Kroes also announced proposals for a Radio Spectrum Policy Programme intended to create the framework for more effective collective use of spectrum

resources throughout the EU, and issued a Recommendation directed to NRAs designed to ensure that the regulation of future fibre networks (so-called 'Next Generation Access') is conducted in a way which balances competition and investment incentives.

Ofcom will be examining these proposals in detail but we believe the fundamental approach adopted by the Commission is the correct one.

It is also our understanding that the Commission plans to issue a report on 'net neutrality' – a much misunderstood concept but essentially the question of how much latitude network operators and ISPs have to shape or manage internet traffic on their networks – and may also propose reform of mechanisms to fund and deliver universal service obligations in the remainder of 2010/2011.

Overall we believe the Digital Agenda is a timely and far-sighted strategic framework which is central for the continued development of ICT economies in the EU. In particular, we applaud the Commission's, as well as the European Parliament's and Council's, recognition of the central importance of the communications sector as a motor for economic growth across the continent. However, the challenge for policy-makers and legislators is turning the ambitious goal articulated in the Digital Agenda into reality.

In this regard, we strongly believe that national regulators, like Ofcom, have an important role to play in ensuring that regulation of our sector is applied in a way which helps, not hinders this objective.

In particular, we believe NRAs should highlight the importance of:

1) **Getting the detail right as we move from vision to implementation.** The risk otherwise is that we end up with increasing uncertainty and a heavier burden of regulation, which may create perverse outcomes. We will therefore continue to watch closely and engage wherever possible on the details of specific proposals to safeguard and promote the interests of UK citizens and consumers.

2) **Keeping the focus on consumer protection** with rules that are justified and proportionate. As Ofcom set out in our response to the Commission's consultation on a post i2010 strategy, "people, whether as consumers or citizens, need to be at the centre of the Digital Agenda, both in the UK and in Europe. This means a shift in emphasis away from simply creating the conditions for market-based competition to take place – although this is of course still critically important". As our own experience to date clearly shows, promoting open and competitive markets is not always sufficient on its own to ensure that consumers and citizens' interests are secured.

3) **Continuing to look for opportunities to de-regulate** as an essential part of promoting the interests of consumers in the digital era. Where new regulation is genuinely necessary and robustly assessed, the Commission should be encouraged to act decisively. However, the introduction of new rules has to be carefully balanced against the significant risk of restraining the introduction of new digital services, or limiting their benefit to consumers – the opposite of what was intended.

7 October 2010