

**RESPONSE TO THE QUESTION 8 OF THE OPEN LETTER PUBLISHED
BY RT HON JEREMY HUNT
SECRETARY OF STATE FOR CULTURE, OLYMPICS, MEDIA AND SPORT
OFFERED BY THE FOLLOWING COMPNIES**



Avanti Communications Group plc
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Inmarsat plc



LightSquared Bermuda Ltd



ManSat Ltd (Isle of Man)



O3b Limited (Jersey)



SES Satellites (Gibraltar) Ltd

Q8 How should the UK engage on an EU/International level in relation to spectrum?

This response to question number 8 is offered by a number of satellite operators, who participate in consultations held by Ofcom specifically addressing UK's engagement at international level on spectrum. The international regulatory framework for the satellite services sets the foundation for, amongst other things, gaining access to spectrum for the satellite networks. Consequently, the establishment and presentation of the UK position at international level is of critical importance to satellite operators within the communications industry. One of the concerns addressed in this response to the consultation is the difficulty arising from the absence of a duty placed on Ofcom in relation to representing industrial interests on spectrum at international level. Currently, such interests will have to be communicated to Ofcom by the Secretary of State for DCMS. These issues are further illustrated below.

The Plan for Growth, published by the H M Treasury and the Department for Business, Innovation and Skills in March 2011, which calls for a new model of economic growth, recognises the space sector as an important contributor to growth in the UK, and identifies a number of actions to support the space sector, including the full and fair access to the limited supply of satellite orbit slots. Moreover, the global space industry is assessed to be worth around £160 billion and the Government expects to win a disproportionate share of these markets. One of the important catalysts for a flourishing space sector is access to spectrum, associated orbital slots and a favourable international regulatory framework. Thus, the representation of industry interests at international fora would be of considerable importance to the industry.

The international forum that is of fundamental importance to spectrum is the ITU, particularly the ITU Radiocommunications (ITU-R) Sector. Apart from on-going discussions on the management of spectrum and satellite orbits at the ITU-R, it undertakes the preparations for the WRCs. WRCs are held by the ITU and have the primary function of amending the Radio Regulations, the international treaty on the use of radio frequency spectrum. Presently Ofcom takes the lead for the UK and engages in all these relevant ITU fora.

Ofcom also conducts national preparations for ITU events, including WRCs, and engages in European preparations undertaken by the CEPT. Therefore, the role played by Ofcom, engaging on behalf of the UK at international level, is of crucial importance to all stakeholders in the UK including the industry.

The EU also plays an increasingly important role in spectrum management on a European basis. Since the EU deliberations lead to legally binding measures, the engagement in those deliberations is also of vital importance to all UK stakeholders, including those from the industry. The UK lead for EU activities appears to be jointly taken by DCMS and Ofcom, and Ofcom takes the lead for some radio committees. Ofcom has provided a forum to brief stakeholders on the EU activities.

A third area of international activity is the harmonisation measures for spectrum within Europe undertaken by the CEPT ECC. Ofcom takes the lead for the UK and where necessary carries out national consultations in preparation for CEPT ECC meetings.

It can be seen from the above that the UK engagement on spectrum at international level (i.e. ITU and CEPT) and at EU level is largely managed by Ofcom. How well does Ofcom represent the wider UK interests, or the interests of all UK stakeholders at such fora?

The Communications Act, in stating the general duties of Ofcom, identifies the principal duties to be furthering the interests of citizens and consumers. In addition Ofcom has a duty ensure the optimal use of the spectrum. Ofcom has not been mandated by the Communications Act, nor directed by the Secretary of State, to further the interest of industry.

Ofcom carries out extensive national consultations and preparations prior to its engagement in international fora, shadowing the work of almost every single international committee (except those of the EU). Generally, the majority representation at these consultations is from the industry, and similarly the issues raised at such discussions largely concern the interests of the industry. Such interests relate for example to amending or otherwise the regulatory frameworks for the benefit of, or to safeguard the interests of industry, and/or to mitigate any potential risks from the proposals

made by other administrations. At the conclusion of such national consultations, Ofcom retains the right to decide on the UK position, and in so deciding on the national position Ofcom can be expected to place a significant weight on its duties identified under the Communications Act and a lesser weight on industry interests, as the need to take such interests into account has not been identified under the Communications Act.

It has been noted that in recent preparations for the WRC there have been instances where Ofcom was minded to give preference only to the interests arising from its duties under the Communications Act, setting aside the interests of the industry.

This situation in the UK causes considerable difficulties for industry. Firstly, the industry cannot be assured that its interests will be adequately taken into account by Ofcom in arriving at the national position. Secondly, there are no assurances that such industry interests will play a part in the negotiations led by Ofcom at CEPT or at the WRC or at the EU.

In contrast the regulators of almost all major nations do represent, amongst other things, the interest of the national industry and such interests set the corner stone of their negotiations in international fora. It has been evident that foreign industry has greatly benefitted from such representation by their respective national regulators.

We also note that the situation which prevailed at the time of the Radiocommunications Agency (RA) better served the industry because the RA (the predecessor to Ofcom on spectrum matters), as an executive agency of the DTI, was empowered to take industrial interests into account.

We urge the Government to recognise the disadvantageous position of the industry and the harm that may be caused to the industry due to lack of proper recognition and representation of industry interests by Ofcom, and take necessary urgent action to remedy this situation. With Ofcom having very effective mechanisms in place to conduct national consultations and being competent to represent the UK interests in international fora, it makes sense for Ofcom to retain the responsibility for national preparations in connection with international fora. Furthermore, Ofcom should be empowered to take into account the interests of the industry in a similar vein to the other principal duties placed on Ofcom in relation to citizens and the consumers.

We urge the Government to consider a two step approach in remedying this situation:

- firstly, considering the forthcoming WRC-12 (starting late January 2012), take immediate steps to require Ofcom to represent industrial interests in the work it carries out for the WRC-12. This work would include national preparations and negotiations at the relevant CEPT meetings and at the WRC. We believe that such a requirement could be placed on Ofcom by the UK Spectrum Strategy Committee or by the Secretary of State.
- secondly, when considering amendments to the Communications Act or establishing other relevant legislation, to include the industry interests amongst the principal duties of Ofcom in relation to spectrum management. This could also be achieved by issuing a further direction requiring Ofcom to further the industrial interests in the course of its international and EU engagement in relation to spectrum management. Such actions would result in

Ofcom being mandated to consider industrial interests in relation to all its work on spectrum at international fora.

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