

Directory Enquiries (118) Review. A review of the cost of calling Directory

Enquiries (118)

Gamma Telecom Holdings Limited

NON-CONFIDENTIAL

Gamma Telecom Holdings Limited ("**Gamma**") welcomes the opportunity to respond to the Consultation published on 13th June 2018; our confidential response is appended.

Introduction

Gamma is a Public Electronic Communications Network that provides wholesale fixed and mobile telephony and data services, to some 1,000 resellers. Two of these resellers are wholly owned subsidiaries and represent themselves over 20% of our business. In all cases, our partners and subsidiaries sell almost exclusively to businesses throughout the UK and increasingly to various European Union member states. Gamma has a turnover c£215m per annum and is ultimately owned by Gamma Communications plc, a company listed on the Alternative Investment Market with a market capitalisation of *over* half a billion pounds.

This consultation response relates to Gamma Telecom Holdings Limited and its subsidiaries. Any conflict between the implied position of Gamma in any UK Competitive Telecommunications Association (UKCTA), Internet Telephony Services Providers Association (ITSPA) or Federation of Communication Services (FCS) responses or that of any other association in which Gamma is involved, is accidental and we consider that our views in this response should prevail.

Gamma trusts that this response addresses the questions posed by the Office of Communications ("**Ofcom**") and would welcome the opportunity to elaborate on any points in more detail if required. Please don't hesitate to contact me, Lee Turner (address as per letter head), for further detail in the first instance.

General Comments

As a Communications Provider serving exclusively business customers, we take a slightly different

approach to this issue. Whilst we are a major terminator of non-geographic numbers, we do not currently host any 118 codes on our network; this puts us in a unique position compared to many. Given the amount of money at stake for a limited number of operators, whose business models are significantly at risk, we consider that there is substantial scope for there to be a legal challenge to any conclusion Ofcom reaches. In the ordinary course of events, we would anticipate Ofcom to recover its costs in such a litigation if it were successful, however, the award of costs in such circumstances is itself subject to a case at the Court of Appeal presently¹. Therefore, there is a risk that a substantial amount of public money could be staked for what is presently just 50 pages of substantive Consultation.

Gamma has always supported, and will continue to support, proportionate and targeted regulatory intervention that ensures a level playing field for competition at a wholesale level and that protects vulnerable consumers from harm at the retail level. We make a number of criticisms of the Consultation not to “derail” the process but to ensure that Ofcom gives service providers a fair trial and arrives at a robust and defensible conclusion.

Inflation and Competition

Ofcom will be well aware that the liberalisation of the directory enquiries market and the challenge of BT’s monopoly in such services was meant to improve consumer choice and promote innovation. In every respect, that is sound economic policy and has generally resulted, in other markets, in the desired outcome. Unfortunately, Directory Enquiry (“DQ”) services are a notable exception to this.

In September 1994, British Telecommunications plc (“BT”) reduced the price of DQ services from 45p to 25p, increasing them to 35p in February 1998. Granted, VAT was 2.5% lower at the time, but by adjusting for that and taking CPI into account over that period to December 2017, means that even O2’s relatively “cheap” service is still 2.1-3.8 (depending on which BT price at which time is taken as the benchmark) fold more expensive in real terms². The “8 numbers at £15.98” referred to

¹ 1 [2018] CAT 6 British Telecommunications plc v Office of Communications gives permission to appeal the costs award in the appeals of the Business Connectivity Market Review to the Court of Appeal which is scheduled to be heard in October with reference C3/2018/0709.

² The BT pricing at the time was for a single enquiry. We have used 60 seconds to make a comparison here; if we were to take the 90 second “average” then this effect is significantly more pronounced.

in footnote 2 of the Consultation are an eye-watering 27-48.7 fold more expensive using the same methodology.

To put this another way, the challenge to the monopoly with the introduction of competition for calling the legacy 192 number has resulted in a 48.7x increase in charges to consumers; and it isn't just competition internal to the market, there are also substitutions with smartphones and the advent of Google in that time period too.

Ofcom's conclusion on the level of the cap is that £3.10 per 90 seconds is about the level to where BT has reduced its pricing, so there's a degree of pragmatism, but also it is about where pricing was before there was an increase in perceived harm.

There is an inherent issue with this logic; BT's revised pricing is still 3.9-7.1 times *higher* in real terms compared to when it was a monopolist in the market. It cannot be correct that this is not harmful, especially given Ofcom's conclusions at §1.7 that there has been no demonstrable innovation in the sector.

In defence of the Service Providers, there has been a reduction in volumes which in turn has an impact on the economies of scale that can be realised, but we would be generally surprised if these lead to the pricing we see today. Equally, we note that the Post Office, Virgin and O2 (and more latterly BT) have price points which are considerably more competitive, but apparently not well advertised or recognised by consumers.

Access Charges

When assessing the level of harm caused by charges to a particular service, the total value of the call has to be taken into consideration. Ofcom's focus in this Consultation has referred to "bill shock" but has conflated shock from the total value of the call with shock relating to the service.

Granted, a total service charge of £15.98 is a material amount of money for any consumer for a directory enquiry, however, the access charge component could be a significant part of their bill too. For example, a 90 second call from a Vodafone or EE mobile will attract an *additional* 82.5p in

charges from the mobile operator. At the level of the proposed cap, £3.10, that's an additional 26.6% charge.

We do not believe that consumers disaggregate such charges in this way from our own experiences dealing with consumers contacting us directly about Information, Connection and Signposting services using Gamma number ranges³. These complaints are often focussed around the total charge for the call (being access charge plus service charge) and the complainant is often unaware that 80%⁴ or more of the total charge they are aggrieved with is gross profit for their originating communications provider.

25p per enquiry in 1994 comes to 40p today in real terms (adjusted for the increase in VAT), which would be less than the per minute access charge from major mobile networks; this is a significant point and Ofcom shouldn't seek to dismiss the access charge as relatively immaterial in this calculation when compared to "harmful" service charges.

Gamma does not seek to disagree with the consumer harm analysis put forward by Ofcom. Indeed, it is rather damning in many respects and is reinforced by other arguments, but Ofcom mustn't be seen to single out just the service provider where the originating communications provider is potentially levying more than one-quarter of the offending charge itself. Where this becomes problematic is that the research by Kantar Media has apparently conflated these elements and has left Ofcom potentially exposed to challenge on this basis.

In any event, we are aware that Ofcom has received representations on the magnitude of access charges before and will invariably receive more than just our feedback herein. It is becoming intolerable for Ofcom to merely maintain a watching brief on this issue and we respectfully urge Ofcom to move it to the forefront of the policy agenda.

³ These are transient; Gamma does not consciously allow its customers to use its network for Information, Connection and Signposting Services.

⁴ Using a 13ppm service charge and a 55ppm access charge. This rises to 88.7% if a 7ppm access charge is used.

Billing Systems and Implementation

Providing that the service providers give due notice in accordance with industry standard terms and that there is no disagreement over the service charge creation etc., then we see no issue with a four month implementation period nor modern billing systems being able to handle the change.

We do have a question arising from the structure of the cap and its implementation in §A10 of the Consultation.

Does Ofcom intend the cap to operate with rounding to the nearest 90 sec block? So, for example, a 1 second call could be £3.10 and a 91 second call be £6.20? Or does Ofcom intend the cap to essentially operate as $\text{£}3.10 / 90 = 3.45$ pence per second and billed on a per second basis? We note that the proposed modification to the National Telephone Plan doesn't make this explicitly clear and that General Condition of Entitlement 17.28 is not as abundantly clear as it perhaps could be in this context either.

Gamma interprets the proposed modification to be £3.10 per call as an absolute cap where the service charge is denoted in a per call charge only; and 3.45 pence per second where it is a duration charge only. There would be permissible variations in between, but where a duration charge starts after a per call fee, we would expect the total charge to reconcile to a cap i.e. no more than £3.10 initial charge, which includes the first 90 seconds and then 3.45 pence per second thereafter.

We suspect that entities in different places in the value chain may interpret it a different way that supports their own economic self-interests and without clarity, attempts to launch services at say £15 per call inclusive of 7.5 minutes of time would somewhat undermine Ofcom's planned intervention.

We are clear on Ofcom's intent here, but the proposed modifications to the legal instruments are not cast-iron and we would respectfully suggest Ofcom engage in a war gaming exercise to ensure the most robust intervention it could make.

Other Issues

We note that at §2.28 of the 2018 Wholesale Broadband Access Market Review, Ofcom stated that

76% of UK adults have a smartphone. We also know that around a quarter of socioeconomic group DE1 is mobile only⁵ and that there are significant demographic variances in the headline figures, but the Kantar Media research that produces a 13% figure for 65+ with smartphone/internet access is based on a sub-sample of just 150 respondents. Given criticisms of small sample sizes levied at Ofcom by the Competition Appeal Tribunal recently⁶, care should be taken on the reliance on this statistic and we would suggest Ofcom use its wealth of information from things like the Connected Nations reports to reinforce the conclusion.

Business Users

Connection services offered by directory enquiry service providers can materially affect the cost of the call as Ofcom note, however, as a business serving CP we note that there are times where these are of value, such as where a driver (lawfully, i.e. handsfree) is operating a vehicle and has the connection made so they can access that number handsfree. A salesman running late for an appointment will have a very different perspective on a £10 charge from a memorable number compared to a consumer that hasn't shopped around for the best value service.

Whilst we would be surprised if the cap would act as a deterrent to any service provider continuing to offer such connection services (we assume they earn more on terminating the 118 call than it will cost them to connect to the onward number); it is important to note the slightly different role such services may play to these customers and that their differing sensitivity to price. We reiterate that the consumer analysis provided by Ofcom does paint a very specific picture, but we note that it is light on the views of other users of DQ services.

Pre Call Announcements

With apologies if we missed the debate in the Consultation, but there does not seem to be an analysis of the efficacy of the pre-call announcements introduced by TalkTalk and Vodafone voluntarily. One would assume that if there is a significantly different amount of harm found in customers of these networks (adjusting for any demographic bias they may have) then significant

⁵ Page 4 of Access and Inclusion in 2016 Outcomes for consumers in vulnerable circumstances published by Ofcom on 15th March 2017

⁶ §246 in [2017] CAT 25 British Telecommunications plc v Office of Communications

weight should be placed on the remedy overall.

We do not recognise the cost estimates or implementation periods for Pre-Call Announcements (“PCAs”) and note that these are derived from an 8 year old study. We would assume that the PCA would be implemented on the service provider network and not the terminating communications provider network and we note that the technology already exists for onward connect announcements. One way speech paths are a mature technology (where the announcement is made before the answer signal is given which commences billing).

Given that Ofcom has been previously criticised for its cost benefit analyses⁷ by the Competition Appeal Tribunal, there would appear to be an avenue to challenge opened up here.

We further note that TNUK’s comments in 2012 have been cited as evidence that PCAs may not be effective; these comments are 6 years old and pre-date the implementation of the unbundled tariff (or, even, it being formally set as Ofcom’s policy) and, importantly, 3 years of practical experience of working with it. Whilst previous comments made by an operator may always be relevant in later policy making, one would struggle to credibly place reliance on a restaurant review that was 6 years old, so care should be taken when citing responses of that age too unless it can be demonstrated there hasn’t been a change in paradigm.

As ever, we trust that this consultation response has been useful to Ofcom and are at your disposal to answer any questions arising.

⁷ [2008] CAT 22 Vodafone Limited v Office of Communications