



The Mobile Broadband Group

London SE15 5YA

www.mobilebroadbandgroup.com

Ofcom' Draft Annual Plan – a response from the Mobile Broadband Group

1. The Mobile Broadband Group, (“MBG”, whose members are the UK businesses of O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to contribute to Ofcom’s annual planning process by making a response to the Draft Plan.
2. The MBG’s response does not cover all areas of the Draft Plan but focuses on those areas where the mobile sector works together and with others to make the mobile market operate more effectively in the interests of consumers, through, for example, the development of self-regulatory measures.
3. In recent years the MBG has been responsible for developing three self-regulatory Codes: for mobile content, location services and responsible selling of mobile contracts. It is currently working on industry guidance on the promotion of mobile broadband services. The MBG has also participated in the development of self-regulatory codes that have a wider application than the mobile market¹.
4. In addition, the MBG holds regular meetings with Ofcom’s consumer policy team to discuss issues of concern to Ofcom and the mobile operators. Our intention is that, through this regular contact, consumer issues are identified quickly and, if appropriate and practical, addressed through voluntary action by industry.
5. The Code on responsible selling of mobile services and the upcoming Guidance on the promotion of mobile broadband are direct outputs from this process of constructive dialogue. We are also currently discussing the re-introduction of 999 Roaming² into the UK and hope to develop this project during 2009.
6. The MBG’s comments focus on the aspects of the Draft Plan that address the development and enforcement of consumer protection policies.

¹ For example, the good practice models published by the Home Secretary’s Task Force for Child Protection on the Internet.

² 999 Roaming provides customers with the ability to make a 999 call on any mobile network. 999 calls without a SIM used to be available in the UK but was switched off after the facility was misused by an excessive amount of hoax calling. Any introduction of 999 roaming will be dependent on stakeholders such as the police being comfortable that safeguards are in place to prevent this re-occurring.

Development and enforcement of consumer protection policies

7. The MBG is very pleased to note (in paragraph 5.46) that Ofcom will be developing *“a strategic approach to empowering consumers, ensuring that there is appropriate consumer protection and taking enforcement action where there is inadequate compliance.”*
8. It is not clear how the strategic approach will differ materially to the current approach but the MBG would very much welcome the opportunity to contribute to Ofcom’s thinking on this matter.
9. It is our perception that Ofcom’s current approach is to initiate too many projects, often too quickly (i.e before giving the market time to react and adjust) and in areas that are often extremely marginal to the efficient working of the market. Furthermore, once a project has been announced, although, ‘do nothing’ is nominally an option, in practice it never is. All these projects overwhelm both industry’s and Ofcom’s capacity to process the work and implement any measures.
10. By way of evidence of this, in the past year, the MBG has responded, among others, to the following consultations: mis-selling of mobile contracts, additional charges, changes to 0870, changes to 0871, separation of advertising in participation TV, and changes to ADR schemes and complaints handling. Of all these Ofcom has only issued a final statement on the additional charges project.
11. This is only a small sample of Ofcom work that is ongoing. To mangle Magnus Magnusson, there should be a bit more of ‘I’ve started, so I’ll finish’, before starting the next project.
12. We believe that Ofcom needs to be much more circumspect before formally announcing and starting projects. It seems that once an initiative is announced there is an inevitability that some form of action will have to ensue.
13. This is not only bad for the market but is also bad for Ofcom.
14. Take as an example the issue of cash back schemes offered in the independent mobile dealer channel.
15. Although Ofcom research revealed that a huge proportion of customers changing mobile contract did so through a Cash Back deal and the vast majority were able to process their claims, a proportion of customers were not. Ofcom raised this with the mobile operators in April 2008. By July 2008, the MBG had written and published a code for the responsible selling of mobile contracts and the mobile operators worked extremely hard and swiftly to expunge unacceptable practices from the independent channel.
16. Notwithstanding this action, on the basis that complaints had not receded within two months, Ofcom announced a formal review in October 2008. Continuance of the self-regulatory arrangement was explicitly excluded as a potential outcome from this review.

17. Fifteen months later Ofcom are still considering what formal action to take. In the meantime, under the self-regulatory Code, complaints have reduced dramatically. We are not criticising Ofcom for failing to introduce formal measures; we do not believe they are necessary or any longer relevant.
18. But we are critical of Ofcom for intervening so soon, before there was any realistic chance of the voluntary code taking effect (because of the lags in cash backs being redeemed). It was also completely wrong that the 'do nothing' option was foreclosed at the time of the announcement of the formal review.
19. The MBG believes that formal measures have not been forthcoming, partly because Ofcom resources have been diverted to other matters and partly because, on closer inspection, the issues around taking formal measures against 'cash back' schemes were actually extremely complex, with a high risk of collateral damage.
20. If the new strategic approach leads Ofcom to exercise greater circumspection, together with greater consideration of the relationship with other work streams and how everything fits together before launching any new project, we would be extremely supportive.

Consumers and the Market

21. It is common ground that consumers' greatest protection is provided by the efficient functioning of the market. This includes market actors being given the freedom to displease their customers and being punished through customer defections and reduced use of their products and services. It is also common ground that formal regulatory interventions creates compliance costs that are ultimately borne by consumers and are thus to be avoided unless absolutely necessary.
22. With respect to the mobile market, the starting point is that it is fundamentally competitive. This has long been recognised by both Ofcom and its predecessor Oftel.
23. The market outcomes have been overwhelmingly positive: increasing customer uptake, continuous introduction of new products and services and prices falling steadily, faster than for fixed services.
24. It is a very dynamic and non-linear market with many unexpected twists and turns. This is extremely challenging for both market actors and customers, who are constantly confronted with the need to become familiar with new prices, new technologies and new services. When the market operates in a state of constant evolution, it is very regrettable but not entirely surprising that some customers become frustrated and feel the need to complain.
25. But the MBG is strongly of the view that the needs of customers and the pressures of the market are fundamentally aligned. Everything a mobile operator does is motivated by the need to deliver ever better value to the customer.
26. There are many many examples of the market adjusting to address issues that consumers objected to or felt the lack of: voicemail, per second billing, prepaid phones (which dramatically increased the adoption of telephony across the population), cross network

bundles, ATM top-up, expiry dates on prepay vouchers, flat rate data tariffs, SIM only contracts to name but a few. The list, over twenty years of market evolution, goes on and on.

27. Technology upgrades from analogue to GSM, to 2.5G, to 3G, to HSDPA and, in the future to LTE, while fraught with risk and uncertainty over precisely which services will be successful, have all been driven by the overarching demand from customers to manage more and more of their personal and working lives while on the move.
28. The market has delivered increased access to mobile communications across a whole range of services, including those for disabled customers. Even though Text Relay on mobile, introduced under a General Condition, has had very low adoption, there are a range of generic services that facilitate communications for disabled customers far more widely (SMS, for one). Use of these generic services must be reviewed before considering a regulatory intervention to require further specific service provision. More bespoke services risk duplicating capabilities that are already available and having to provide them would again only serve to increase operators' overall costs, with minimal benefit to consumers, who prefer using mass market services.
29. The MBG suggests that the instances where the regulator can intervene in a way that is more meaningful and effective than the operation of the market have been and continue to be extremely few and far between.

The MBG's recommendations

30. The MBG therefore very much welcomes Ofcom's commitment to re-assess its strategic approach to consumer protection. We suggest that the re-assessment needs to take the following steps:
 - a. Identify the formal measures that Ofcom has deployed since 2004. Evaluate which of these have been demonstrably effective and truly cost effective in improving market outcomes and the consumer experience (and which have not).
 - b. Identify the key drivers to the efficient working of the market sector in question
 - c. Develop a much more rigorous methodology for deciding whether the market, voluntary action or formal intervention will deliver the desired outcome. Conduct a gap analysis to ascertain whether additional measures are needed or existing powers will meet Ofcom's need.
 - d. Be explicit about the priorities of actions being taken/required
31. The MBG believes this step by step process will lead Ofcom to put in place consumer protection measures that are much better thought out, implementable and effective and which Ofcom is far better placed to resource in reasonable timescales.

32. As part of the process, we would suggest that Ofcom also closely examines whether the codes of practice required under the General Conditions have worked. They have been in use for several years now and it is timely to review whether they are an effective regulatory tool and whether there is scope for streamlining.
33. Of course we agree that a well functioning market is dependent on there being a well informed consumer. We are pleased to learn that there will be an evaluation of the provision of Quality of Service information. We agree in principle with the provision of QoS information but only so far as it is genuinely relevant to a customer's buying decision and is cost effective. We support Ofcom in revisiting the topic of QoS with a very open mind.
34. We would also urge Ofcom to re-examine its criteria for intervention, in particular the timing of any intervention. It needs a better way in which to assess whether and when the market might be capable of correcting any particular issue. We recognise that Ofcom can come under political or media pressure to intervene in some consumer protection issue sooner rather than later. But Ofcom, while always having to be sensitive to public opinion, is an independent, primarily economic regulator, with a bias against intervention.
35. Premature intervention leads to Ofcom resources being unnecessarily wasted, potentially heavy compliance costs and the risk of unintended consequences and regulatory failure. Ofcom was established with a bias against intervention with good reason.
36. It is not Ofcom's role to manage for particular market outcomes. It is there to see that the market operates efficiently, in the interests of consumers. This includes allowing businesses that do their job well to be rewarded by customers and those that don't to be punished by them (or at least a lack of them).
37. The MBG very much hopes that these ideas will be taken up by Ofcom. We remain, as always, open to discussion about any matters Ofcom wishes to raise with us. We would welcome the opportunity to go over this response in person with the relevant members of Ofcom's team.