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Dear Emma,

Re: Consultation on Mobile citizens, mobile consumers

Introduction

Consumer Focus welcome this opportunity to comment on the consultation 'mobile citizens, mobile consumers: adapting regulation for a mobile, wireless world'. We commend Ofcom for raising many extremely interesting and important issues. We also commend Ofcom for taking forward a number of important issues in conjunction with this review.

We note that Ofcom starts its consultation with a number of fairly broad questions:

- *What are the implications of market change for mobile and wireless services?*
- *How are citizens and consumers affected by developments in the mobile sector?*
- *What are the purposes of mobile regulation, and where should its focus lie?*
- *What is the scope for deregulation, competition and innovation in the mobile sector?*

While we recognise these as important questions we would seek to add a further one. The interests of consumers are raised in relation to how they are affected by developments in the mobile sector and in later sections (section 8 in particular) we note that the focus is on consumer protection. We are concerned that this characterisation of the consumer interest is a little passive; they are affected and need protecting.

We would rather couch our views and the review of the mobile, and narrowband sector to follow, in more positive terms. We believe it is important to understand how the consumer interest is advanced in this sector and how consumer welfare is advanced by the activities of all players in the market. We do not view this as an exercise in semantics. We view any market and any process of competition in how it delivers welfare advances to consumers. Consumers are not simply passive recipients of the competition bestowed upon them in the marketplace, but active participants in the interplay between firms and consumers and citizens. Their ability to act as the

informed, empowered, marginal consumer will decide the extent of real effective competition in the sector concerned. Such a consumer-focused approach to looking at the mobile sector places competition and regulation in a slightly different light to that cast in the consultation.

Our response identifies what we view as key passages in the consultation and we have made targeted comments on those sections. We have quoted the relevant paragraph or graph to ensure that our comments are easily traceable.

The consultation has raised a significant number of issues regarding consumers and mobile telephony and internet use. One of the most interesting and difficult issues relates to the social externalities of telephony, both fixed and mobile, and the role of the Universal Service Obligation. We welcome Ofcom's raising of this tricky issue. The issues posed for mobile networks on coverage, 999 roaming, 'not spots' and the USO should be addressed as part of an overall review of the USO in relation to all forms of telephony. The objective should be to identify the most efficient means of delivery for the highest common factor in social cohesion and consumer access.

We welcome moves to address the issue of information provision in the mobile market but remain concerned that information solutions cannot deal with hidden charges or overly complex pricing structures. Any market, where major operators charge for access to itemised bills, is a market where incentives are skewed against consumers becoming informed and empowered. We welcome efforts to make information more understandable and believe Ofcom should consult widely with consumers and other consumer groups to ensure the new benchmark is meaningful to consumers. Consumer Focus would be happy to provide support to Ofcom, as this is an area where we have direct experience of other sectors and a strong interest in this area.

We are sceptical of proposals to change the call termination regime, but welcome discussion of alternatives. We recognise the complexity of call termination regimes and the regulatory battles that reviews regularly throw up. However, as call termination rates are hidden from consumers and are based on significant market power we remain concerned that any proposed deregulation in this area will give operators an opportunity to further disadvantage consumers.

While Ofcom has mentioned that it is not necessarily in a position to look at the particular problems of low income consumers, we are convinced that a thorough analysis of the differential packages and prices available to low income consumers needs to be analysed. We would welcome any such review taking place alongside the discussion of the Universal Service Obligation. In essence we would welcome a review of the social externalities of telephony and its role in social cohesion. This would enable us to look at the structure of pre-pay and contract services and whether they unfairly discriminate against low income consumers. Of course we recognise that low income consumers can gain access to markets in a way that they may not otherwise do, but we

would welcome a discussion of whether this access is balanced properly against unfairly higher charges.

Section 2: Why is Ofcom undertaking this Assessment?

Paragraph 2.6 Our approach to regulation of telecommunications begins by asking what the market will deliver, and only then considering what role, if any, regulation needs to play. Our long-standing strategy is to promote competition at the deepest level of infrastructure where that competition is likely to be effective and sustainable. For mobile telecommunications, that has meant competition between networks. Mobile telecommunications has never been a monopoly in the UK. Once competition was established, the market has been driven by customers' needs, with technical and commercial innovation spurred by competition. Competition has been a success for UK citizens and consumers.

Paragraph 2.7 Therefore, this Assessment begins by considering: how is the market functioning? What is it doing well? What is it not doing well? And how might that picture change in future?

Comment

We would certainly agree that it is important to assess how the market is functioning. However, we think it is important to take a step back from this initial analysis and ask how consumers behave in the market, what aspects of the market are linked to certain well-established patterns of consumer behaviour and how particular aspects of the mobile market are likely to interact with these well-established aspects of consumer behaviour.

This is an important first step because it asks the rather fundamental question as to whether the market is composed of the firms that supply the services - the unwritten assumption in the Ofcom approach - or whether it is in fact composed of consumers interacting with firms that respond (in part and in a mediated manner) to the signals that consumers give them in the marketplace.

Section 3: Today's UK mobile markets

Paragraph 3.14 Increasingly, users have more than one device, fragmenting their expenditure among multiple mobile connections. Ofcom research in July 2008 found 11 per cent of adult mobile users use more than one SIM. Over a third of mobile users with more than one subscription claim they do so in order to separate work and personal calls.

Comment

We would be interested to view more analysis of the reasons why consumers have more than one SIM. While separation of work and personal calls is a significant factor,

we are still left with two-thirds of consumers with more than one SIM unaccounted for in this section.

We would be interested to know if, for example, the length of contracts clashes with consumers' desire to change handsets to take account of technology advances. For example, someone with one mobile phone may wish to get an iPhone, but has to take out a new contract because they are already contracted for a period in excess of that which makes switching possible.

We would also be interested to see whether caller groups has an affect of multiplying mobile phone usage – does someone with caller groups on more than one network (friends and/or family for teenagers) have to take more than one contract out to minimise call spend.

We would be interested to see more detail on the different drivers of multiple SIM card ownership to identify if there are any market distortions at play.

Footnote 17 This is likely to overstate the true position to some extent. The UK Communications Market Report 2008 conducts a reconciliation of the number of users and the number of devices (at Figure 5.63 on page 335). Citing research by Enders Analysis, the CMR08 notes that some of the 'extra' devices may be inactive or barely active SIMs, leaving 9.4m "genuine second SIMs", which roughly matches with the 11 per cent of users who report themselves to have two or more devices

Comment

While we recognise that a number of people may have inactive or rarely used SIM cards – we would be interested to know how many of these are incurring costs to consumers and how many are simply rarely used pay-as-you-go SIMs. Within this latter group the issue of time expiry would be interesting to analyse.

Paragraph 3.30 In the context of a market where consumers have a choice of provider (and a choice whether or not to enter a contract or to pre-pay), the terms of retail contracts are not subject to sectoral regulation.²³ That means that the length of contract, and the trade-off with other factors such as the monthly access charge, up-front payments, handset subsidies and charges for out-of-bundle services provided during the contract are a matter for the market, provided that consumers have all the information they need to make a properly informed choice.

Paragraph 3.31 That said, the use of longer-term contracts may have some detrimental effects on the market. In particular, when customers are tied in to the same supplier for longer periods, the supplier may not have to compete as hard – either to win new customers to replace those who leave, or in offering better terms to retain those who are considering switching.

Comment

We think that it is useful to look at the issue of contracting from the consumer point of view. When a consumer is encouraged to take out a new mobile phone contract it is rare that s/he would consider contract length as a significant factor.

We note with interest that the consultation recognises that the market should operate when “*consumers have all the information they need to make a properly informed choice*”. We are not convinced that this is a market where consumers either do have all the information they need or can understand it when they are given it. The ability to calculate the actual cost of a contract over time is dependent on immediate factors, such as cost per minute, or cost per month, plus cost of handset and call termination charges, insurance products, bundle of associated services and whether the consumer wants to have an itemised bill or not. There is then the forecast item to assess, namely the number of minutes over the period of the contract, that the consumer is likely to use the mobile phone for.

Given the combination of calculations that the consumer is required to make when considering a purchase decision, it is likely s/he will rely on proxy measures. These measures are likely to include existing contracts (in the case of an experienced consumer) or those of friends or family (in the case of new contractors). In both cases the lack of absolute transparency in contracts (the need to buy access to itemised bills in some cases, call termination charges and bundles that make comparison difficult) makes the use of proxy measures flawed.

Further analysis of the purchasing decisions of consumers and how they differ based on the routes to market used such as online price comparison sites compared to in store purchases, would be useful.

We are also interested for Ofcom to explore the relationship between contract length and technology innovation. If a consumer contracts for 18 months, but the technology they have purchased is superseded within 12 months, there are a number of potential impacts. Firstly, the consumer may break their contract and take out a new one, paying all future charges, or simply putting the contract on ice and paying the minimal amount. The consumer may forgo immediate switching and wait for a later date to do so (which may perversely slow new technology adoption), or they may take out a new rolling contract at a different rate to gain access to the new technology. We would be interested to see some analysis of this interaction between contracting time and innovation.

Paragraph 3.43 However, as businesses become more reliant on mobiles to function efficiently and take advantage of newer technologies such as push email or mobile internet, they may be particularly vulnerable to ‘not spots’. Not spots describe gaps in coverage and lead to familiar issues such as dropped calls. On the established 2G network surveys have indicated steady improvements in coverage, although the

remaining gaps that exist are a source of real frustration for those affected. As well as hearing directly from stakeholders, a number of our Advisory Committees (for example, the Committees for Wales and for Scotland) have consistently raised with us the fact that improvements have not reached all areas. It is widely recognised that the 3G network is less extensive, particularly outside urban areas. Although 'not spots' in 3G coverage may not lead to calls being cut off, as the call is passed back to a 2G network, it does lead to dropped high speed internet connections and data transfers.

Comment

We agree that 'not spots' are a particular concern for specific locations. This has two impacts on consumers. Firstly, those that are in 'not spot' areas may find themselves either investing in technology that does not work or they may suffer a worse service than if they lived in a different area entirely. Secondly, areas of poor coverage also affect any consumer that travels for work or pleasure. Almost any long distance journey will place a consumer in areas of poor coverage as well as good coverage. Any consumer wishing to use a 3G dongle on a train, for example, will find dropped service a regular occurrence.

Paragraph 3.85 Co-operation among the MNOs and across the value chain can provide multiple benefits to the industry and consumers:...(edited)

- *It can lead to the availability of services in areas where there may not be an economic incentive for a single MNO to provide service. This may be true in thinly populated geographies where a single MNO may not be able to provide service profitably*

Comment

We are interested in the discussion of the possibility of cooperation between networks. As the paper suggests such cooperation raises competition concerns, but can offer some benefits. We are particularly interested in the section above that sets out the possibility of networks combining to serve areas that are currently under-served. However, the examples quoted appear to be related to sharing existing radio networks, rather than extending them to new areas.

If the restriction of competition created by cooperation is not balanced by a sufficiently large benefit to consumers we would consider the deal to be poor value for consumers' money. If firms cooperate to extend coverage and ensure 3G reaches parts of the country, and thus consumers, that it currently does not, we would consider the deal better value for consumers. We are thus a little concerned to note that such a balance appears not to be an explicit part of the analysis of such cooperation deals. It would be helpful if Ofcom could provide further clarification on this matter.

Paragraph 3.96 As Figure 42 shows, the part of the value chain that has seen the greatest revenue growth is in content provision. While there remains considerable uncertainty, the uptake of 3G services, availability of advanced handsets and the

increasing use of the mobile phone for data services all have the potential to fuel the demand for more content on mobile platforms. While revenue growth in this segment has been strong in percentage terms, the total content market is still very small compared to other elements of the value chain.

Comment

The range of content available to consumers has indeed grown significantly over the last few years, and looks set to continue growing. However, this has been one area of significant concern to consumers, particularly inexperienced ones. The consultation mentions 'bill shock' in relation to mobile broadband but not in relation to content. However, it is in the provision of content like ring tones, or wallpapers, that 'bill shock' has often been at its most extreme. We would have preferred a much larger section of analysis on the types of content on offer, the business models employed (such as cleverly hidden subscriptions), and the redress problems faced by consumers. We look forward to some follow up work in this area.

Question 3.1: What do you think are the features of a well-functioning mobile market? What evidence do you see that those features are present in the UK market?

Question 3.2: What measures are most appropriate to assess whether the mobile sector is performing well for citizens and consumers?

Question 3.3: How will market dynamics change as a result of trends such as availability of new spectrum, mobile broadband and new ways of delivering voice services?

Comment

We will answer all three questions together. Any well functioning market would see a close correlation between consumer demand and service provision. We consider such issues as contract length and renewal, contract transparency and 'bill shock' as examples where the market is not functioning effectively.

The network operators appear to be able to decrease the time between the introduction of new handsets (on which most competition is based) but increase the terms of contracts. If competition and advertising is based on the provision of new handsets and functionality, but the barrier to getting that technology is increased then consumers are either forced to delay purchase, or suffer costs in switching or upgrading that otherwise would not exist.

We are also concerned to see a market evolving that does not guarantee universal coverage or performance. In the fixed line telephony market there is a universal service obligation that requires the provision of a service to all consumers. The lack of a comparable requirement in mobile telephony clearly creates problems for consumers and communities in area of poor provision. While this is more a citizen than consumer

problem, the existence of 'not spots' can have quite a significant impact on the willingness of consumers to live, work or visit areas without decent mobile coverage. The impact on businesses of being in a 'not spot' could be significant. Please see our comments on paragraph 7.36.

We are also concerned about the fact that consumers on pay-as-you-go contracts are paying significantly higher sums than those on regular contracts. While we recognise the different commercial drivers of such services, there remains a concern that those least able to pay (and thus who can afford an increasingly lengthy monthly contract), are charged more for a service that is essentially as good or as bad as someone with a higher income level. While such an issue may not be of high importance now, the erosion of fixed line revenues and growth of mobile revenues is moving the issue up the agenda.

The solution to the consumer/citizen issues, coverage, differential charging and contracting transparency are unlikely to be wholly addressed by technology advances. They require a political and regulatory response. Given that the problems faced by consumers are a mix of existing and potential problems we would welcome a discussion of a timetable for analysing these problems.

Section 4: Consumers

Paragraph 4.16 At the same time our research on the consumer experience in the mobile market showed, that in 2007, a proportion of consumers showed less interest in market developments, switching provider or negotiating a better deal than in previous years. The reasons for this are unclear, and it is uncertain whether this has any impact on the take-up of new, higher specification devices (although given other indicators of take-up, such as the growth in smartphone use, this seems unlikely).

Comment

Further work is needed to understand why consumers are apparently showing less interest in market developments, switching or negotiating a deal. A follow up piece of work using focus groups, for example, could help identify precisely why some consumers are taking the views outlined.

This analysis would help identify if the problem is a market distorting one, a consumer-time valuation issue or some other driver. The reason for the anomaly is as important as the existence of the anomaly itself.

Paragraph 4.31 It is not clear why, given these factors, many consumers feel tariffs are complex and consumer concerns are rising. We intend to do further work in this area, including analysis and consumer research during the next phase of our Assessment.

Paragraph 4.32 In our current work programme, we are reviewing the existing regulatory requirements on communications service providers to provide certain information and whether they should be extended to other services, including mobile.

Comment

Consumer Focus very much welcome further work on these aspects of consumer experience of mobile telephony and look forward to working with Ofcom to deliver a better market for consumers.

Paragraph 4.35 In addition to charges for providing different telecommunication services, network operators also charge for a number of additional features that are broadly similar across the networks. A comparison of the five UK network operators reveals that:

- *all levy additional charges for non-direct debit monthly payment for post pay customers;*
- *none include all non-geographic numbers in the call allowances available to post pay customers. However, some include access to some non-geographic numbers in the call allowances provided to customers;*
- *all provide additional insurance protection to their customers;*
- *all employ rounding of monthly bills;*
- *all charge for a paper version of itemised billing (although this is free online);*
- *none allow rollover of unused call and SMS allowances; and*
- *all levy a minimum call charge.*

Comment

We note that all operators therefore effectively impose terms on consumers that are non-negotiable and non-avoidable and are uniformly to the benefit of network operators. We are particularly concerned that all operators charge for paper bills. As bills are one of the few ways for consumers to work out their charges this is a particularly perverse incentive in the system for consumers, which limits their ability to understand their bills, whether they are on the right package for their actual usage and more widely, how the market functions. This is essential information for consumers seeking to make an informed choice about switching providers or switching to another contract with the same provider.

Paragraph 4.48 At the same time, other charges that are less visible to consumers have risen - including call set up fees, or charges to call customer services.

Paragraph 4.52 The predicted pre-pay charges for each user profile has remained stable or, slightly increased over the last seven years, in nominal terms. For the customers concerned, a significant fall in the advertised headline prices has not translated into cheaper services.

Comment

We reiterate our concern regarding the transparency of charging and contracts. If consumers are seeing prices fall in areas where they can gauge the impact, but facing higher prices in areas with less transparency then consumers are, to some extent, being misled by the information presented to them. This is not a facet one would expect to find in an effectively functioning consumer-focused market.

Consumer Focus welcome Ofcom's wish to focus on this area of the market in the next phase of its work and look forward to working with yourselves in identifying the key issues and solutions.

Paragraph 4.60 Customer problems with bill-shock are often widely reported in the national press which raises consumer awareness of potential problems no matter how likely or not, they are to occur. In the extreme, people may voluntarily avoid using mobile services to prevent unwanted charges. Although there is little direct evidence, it seems more likely to be a factor in relation to, say, international roaming (particularly for data services) than domestic services. Separately from this Assessment, we are currently looking at the issues around 'bill shock' in order to understand better some of the concerns raised and to determine whether regulatory intervention is necessary

Comment

Consumer Focus welcome Ofcom's desire to look at 'bill shock' and would very much like to see more detail about the research it plans to carry out in the area and the solutions it may be proposing to stop consumers being charged in an un-transparent manner. This concern is very much supported by the complaints data set out in Figure 65.

Paragraph 4.65 Complaints to Ofcom about cashbacks have recently fallen sharply (Figure 64). However, complaints about general mis-selling have not fallen to a similar extent (Figure 63).

Paragraph 4.75 Inevitably, rising complaints attract regulatory concern. As described above, in the case of cashback schemes, a code of practice adopted by industry has shown positive signs with complaints falling. However, the mis-selling problem persists. These varied experiences suggest that there is no a single 'one-size-fits-all' approach to these issues.

Comment

We find table 63 and its description in paragraph 4.65 interesting. If trend lines were applied to any of the complaints areas we would see a gradual rise in the number of complaints.

If we applied trend lines after the introduction of the code of practice to mis-selling we would see a flat rate and in the case of slamming an upward trend. A recent reduction

in mis-selling complaints is welcome, but on past experience not necessarily permanent.

Complaints about Cashback offers do seem to have decreased lately, but again, if a trend line were applied from October 06 we would see a steady upward trend in complaints. Complaint numbers appear to have stabilised at levels originally seen in early 2007. We would be welcome further analysis of this area of Ofcom's work.

Question 4.1: What is your experience, as an individual consumer or an organisation that uses mobile services?

Question 4.2: How should regulators and policy-makers respond to signs of rising consumer concern?

Question 4.3: What are the important factors to consider in striking a balance between protecting mobile consumers and enabling markets to work flexibly? Have we got this balance right in today's mobile market?

Comment

We note with great interest the work already underway in Ofcom focused on consumer complaints and concerns. We trust that such work will include in-depth analysis of consumer experience and reach below the surface of some of the analysis that has highlighted some potential problems, but not identified causal links to issues that may be capable of being addressed by regulatory or market solutions. We refer back to our concerns on contracting, transparency, billing, 'bill shock' and redress and note that these are all part of the Ofcom work programme.

Section 5: Citizens

Paragraph 5.36 We intend to explore question of involuntary exclusion from the mobile market more in the next phase of our Assessment.

Question 5.1: How does the use of mobile services affect our participation as citizens in society?

Question 5.2: What factors should we take into account in thinking about access and inclusion issues in mobile markets?

Question 5.3: What factors should we take into account in thinking about new services, and how those services may affect issues like protection of children, privacy and security?

Question 5.4: Have you been affected by issues about coverage or 'not spots'? How has it affected you?

Comment

We note with interest the analysis of citizen issues in Section 5 of the consultation. We have refrained from detailed comment as most of the issues that have been raised are already covered in the consumer section. We note with interest the more detailed analysis of a lack of coverage for 3G in particular outside of major conurbations. We think that it is difficult to consider citizen and consumer issues separately from analysing the degree to which a mobile phone is of near equivalence to a fixed line phone and the social externalities that are attached to its ownership and use. We note that discussion of a universal service obligation has been left until later in the process.

Section 6: Regulation

Paragraph 6.23 Extending the regulations to cover SMS and mobile data services would be likely to bring consumer benefit by increasing pricing transparency and reducing the potential for bill-shock. At the same time, it could also increase the risks of possible regulatory failures (for example, by generating unintended consequences), particularly if that regulation is not carefully tailored and targeted.

Comment

Reducing roaming charges for SMS and mobile data will have the added consumer benefit of reducing bills as well as 'bill shock'. We would welcome clarification of exactly what consequences Ofcom believes may emerge from cutting roaming SMS and mobile data charges. This would be useful in light of the experience of the reduction of mobile roaming call charges.

Paragraph 6.39 In the consultation we noted that, by proposing a new General Condition, we were primarily seeking to improve the consumer experience of mobile customers. On 29 April 2008, the consultation closed, and Ofcom intends to publish its conclusions from the consultation shortly.

Comment

We look forward to seeing the proposals that Ofcom will bring forward in the field of consumer regulation and, in particular, on the duty not to trade unfairly with consumers.

Section 7: Scenarios

Mobile Voice Wins: Prospects for fixed de-regulation

Paragraph 7.36 To the extent that fixed and mobile services compete head-to-head, this raises important implications for the regulation of fixed services (much of which is predicated on the distinction between fixed and mobile).

Question 7.1: What do you see as the most influential trends and features of mobile and wireless markets in future?

Question 7.2: What new policy and regulatory challenges could the trends highlighted in this section bring? Which policy and regulatory challenges could they address?

Comment

We note with interest the discussion of possible future scenarios. We also note that in option 2 (Mobile Voice wins) one of the possible assumptions is that fixed line deregulation might take place. While we do not challenge this as a possible outcome, we believe this scenario would benefit from a discussion of the social externalities of a switch to mobile telephony. In particular a sharing of the USO or some other form of citizen focused service obligation is not discussed. If fixed telephony is to be replaced by mobile then a re-focusing or re-balancing of the existing USOs must be explored.

We think that the scenario planning outlined is useful, but more detail on achieving the right consumer/citizen balance is needed. The externalities of mobile telephony technology have been discussed in some detail elsewhere. The lack of coverage in some areas and among some communities is a significant problem for those consumers and the inability of a potentially universal technology to offer that universality to all citizens and consumers is a concern we do not see addressed in detail in the scenarios.

If we extrapolate trends and issues in the existing mobile market then we will be left with significant transparency, contracting, billing and coverage issues. In combination these are not naturally solvable through technological means and are likely to require a regulatory response.

In general we do not think that there are likely to be new challenges, but the existing problems outlined above will require re-visiting.

Section 8: Implications

Paragraph 8.21 Reported customer satisfaction with mobile phones has remained high over a number of years. But we are concerned about signs that some indicators of poor customer service and other consumer dissatisfaction appear to be rising – and it may be that the increasing complexity of this market may accentuate some of these issues. While we want to understand the reasons for this in greater detail, we see this primarily as a challenge to industry, to improve the customer experience and address the underlying causes of this trend.

Comment

We would welcome a much more detailed analysis of customer satisfaction in the mobile market. We are concerned that a block of consumers may state that they are

satisfied with their mobile provider, but this may mask deeper issues. There remain submerged issues in customer satisfaction surveys that are very often of considerable interest in understanding the dynamics of consumer behaviour. The interplay of satisfaction, transparent complexity and apparent complexity are worthy of further exploration.

We mention apparent complexity because we view the mobile market as having both transparent complexity (an inability to easily compare tariffs and estimate likely bills), with apparent complexity (hidden charges and complex contracting terms). We would be interested in understanding the extent to which transparent or apparent complexity is increased by any changes in the mobile market and the interplay between complexity and submerged consumer satisfaction issues.

Paragraph 8.25 Pursuing that outcome helps ensure that regulation can continue to be used sparingly and only to achieve clearly articulated public purposes that markets, by themselves, cannot or will fail to deliver. However, we see some possibility that there may be a shift in the emphasis of regulation:

- *Regulation has so far often focused on competition issues (particularly regulating termination rates) and spectrum. Given the market trends set out in this document, we see a possibility that consumer and content issues will grow in significance.*
- *To date the focus of social policies such as universal service has been on the fixed network. We may need to reconsider this approach, particularly if the trend continues for mobile usage to displace fixed usage. For example: can or should mobile technology play a role in the delivery of universal service?*

Comment

If we assume that regulation is best placed to deal with market failure we see little scope for its immediate reduction. We would welcome a greater focus within Ofcom on consumer and content issues. Indeed as is rightly pointed out in paragraph 8.25 the issues of call termination is unlikely to fall off the regulatory radar as a consumer-competition issue as it focuses on a hidden charge on bills. The lack of effective transparency and competition between network providers will mean that call termination charges must remain regulated for the foreseeable future.

We are very pleased that Ofcom has recognised the importance and difficulty of dealing with the universal service obligation in an era when mobile provision potentially outstrips landline provision. It would be useful for Ofcom to commence the discussion on the provision of the USO for telephony and the role of different technologies in that provision. This will help to frame telephony, both fixed and mobile, within the overall social policy mix of the UK. This is not to presuppose that mobile telephony will of necessity play a role in USO delivery, but more to argue that a discussion is best timed for the present day.

This is preferable to a gradual erosion of the provision of the USO and its withering on the vine, with regular calls for its removal. A wholesale review would allow all parties to develop their arguments for how to ensure that all citizens and consumers can benefit from a modern telephony service to ensure social cohesion.

Paragraph 8.27 Taking our statutory duties as a starting point, we see three core purposes of Ofcom's work in mobile markets:

- *To maximise the role and intensity of **competition**. This means actively promoting, rather than simply protecting, competition – the distinction is discussed further in paragraph 8.31 below. Promoting competition includes encouraging efficient investment in infrastructure – with the opportunity to earn fair returns – and promoting innovation.*
- *To set, and enforce, clear rules for **consumer protection**. This needs to take into account the development of an increasing range of complex and content-rich services.*
- *To **adapt** regulation as the market changes. Regulation should not prevent innovation (indeed, our aim is to promote and encourage innovation). In particular, we should roll-back regulation where appropriate – for example, as and when fixed-mobile convergence occurs.*

Comment

We think that Ofcom's discussion of the promotion of competition is a useful one – but note that it identifies two areas of work, deregulating fixed line and spectrum release that are outside the scope of this consultation.

We are less convinced that the mobile termination regime is necessarily primarily a competition issue. While call termination has clear market structure impacts it is also a consumer protection issue, in the sense that consumers are unaware of the charges that are imposed upon them for the 'service'. It forms part of the hidden charges element of the bill. We recognise the need to maintain a close overview of interconnection charges and support any efforts of Ofcom to maintain an overview of this area.

Paragraph 8.37 Finally, we turn to a number of issues where there is considerable uncertainty about the need for regulatory intervention. These are issues that may arise given the trends we see or scenarios posed in section 7, but which raise questions about future regulation that are far more speculative:

- *Could there be a role for regulation to encourage adoption of 'open standards' to help foster innovation – for example mobile 'net neutrality' or open standards as spectrum licence requirements like the US regulator has done?*
- *Would it ever be appropriate to regulate wholesale access to mobile networks?*

Comment

We welcome the raising of these issues by Ofcom and look forward to a considerably more detailed analysis of the options emerging from Ofcom in the near future.

Paragraph 8.42 We are interested in views on whether the current market review process and the structure of mobile termination regulation can be improved in any way. For example, can we achieve the same or increased benefits to consumers in a less resource intensive way (including for industry)? Will technological or commercial changes reduce or remove the need for regulation of termination rates? If regulation is needed, can the process used to set prices be simplified or improved?

Comment

We find it difficult to believe that we can easily move from a situation where operators are deemed to have significant market power to one where exactly the same situation prevails, but the market is deregulated. Given the lack of transparency on charging and the inability of consumers to either avoid termination fees, or shop around on the basis of such fees, then deregulation would lead to a significant loss for consumers. Allowing operators to set fees either between themselves or independent of the regulator is unlikely to benefit consumers while significant market power exists in the hands of operators.

This combination of un-transparent charges and significant market power is a classic example of a market where regulation is likely to be needed. We would be very concerned if proposals would be brought forward to replace the existing regime. While it is true that the existing process is contested it is precisely because it tends to work for consumers that operators contest it, as it reduces their ability to extract revenue from consumers in a manner that they cannot easily identify.

Paragraph 8.52 Those reviews will consider whether BT still has significant market power in relevant markets defined in that review, by applying established principles of competition policy. A critical question will be the extent to which BT faces competition from, for example, the services of other fixed line operators (such as Virgin Media, the cable company) and from other sources – including mobile services

Comment

We welcome the review of narrowband services and its link to mobile services. We would like to see discussion of the USO and the social externalities of mobile and fixed line telephony included in such a review.

Paragraph 8.76 In a competitive market, we expect that the degree of ‘net neutrality’ (if any) is to be determined by consumer choice and therefore does not require regulation. As long as consumers have a choice of access supplier, and consumers are able to switch operators, then unpopular blocking of services or content should be unprofitable. As a result, we have previously seen no case for intervening in relation to fixed internet access.

Comment

The consultation's discussion of net neutrality is too optimistic. If consumers purchase a particular package from a mobile operator and wish to access internet services from it then it is unreasonable to expect them to suffer performance problems when accessing a site that the network provider does not earn enough revenue from. Consumers should be able to purchase a mobile package without having to add the complexity of the various deals on internet access that their providers will support, allow or indeed degrade. It is unrealistic to expect switching to discipline this sub-market of the overall market and the importance of neutrality for consumers should not be underestimated.

Ofcom has rightly highlighted the complexity of existing contracts and packages and the likelihood that this will increase in the near future. Adding another layer of complexity, the web of internet access agreements, will only cause a greater consumer welfare loss and harm the functioning of the market.

Paragraph 8.90 In considering the implications for consumer protection, we raise a number of issues:

- *first, we ask whether there ought to be a wider debate about the possible implications for privacy and personal security of a world where location-based services become widely available – a question that goes beyond Ofcom's remit but that we pose to assist other agencies, and Government, and interested stakeholders;*
- *next, we consider whether we should seek to provide consumers with more information and tools to exercise effective choice in the mobile market;*
- *we then consider whether, given the issues raised in our analysis about 'not spots' and lifeline access, there is a role for Ofcom (whether by imposing regulation or by facilitating commercial processes) to help extend coverage outside urban areas and ensure the widest possible access to 999 services;*
- *we also note our intention to consider in more detail in the next phase of our work the question of those groups who are involuntarily excluded from the mobile market; and*
- *finally, we ask whether there ought to be a wider debate about mobile content issues. Here there is considerable uncertainty, and many of the issues relating to mobile content fit into a wider set of questions about internet content more generally.*

Comment

We recognise that Ofcom is not best placed to deal with the privacy issues that are raised in this paper. However, we welcome the initiative that Ofcom has shown in raising these issues and look forward to a robust discussion on how consumer privacy can be protected in the emerging technologies.

We are concerned that providing more information for consumers may not discipline the market sufficiently to encourage further competition. If complexity is hard-wired into the system, through the activities of the major players with significant market power, the chance that an information based response is appropriate is slim. Such a market rarely responds to more information for consumers, particularly as the construction of reliable proxy measures is difficult and often bears little relationship to the base data that is used to inform consumers in other ways in the marketplace.

We note, however, that this is a rather peculiar market in that operators tend to charge people to access itemised bills, thus dis-incentivising them from seeking out accurate information about their usage and their bills. Ofcom should explore possible remedies to deliver the goal of greater information provision such as stopping operators from charging for itemised paper bills or enforcing some form of uniformity in calculating bills, or providing ‘health warnings’.

We believe that there is certainly a role for Ofcom in looking at the issue of ‘not-spots’. Such a role must be closely tied to the review of narrowband and mobile universal service obligations. We do not form a view in advance of the particular means of delivering wider access for all consumers in the UK, but recognise it as an important tool of social cohesion and wider economic development.

We welcome further work on the excluded groups, but would also like to see considerably more detailed work on those consumers who state themselves to be satisfied. We would welcome a more in depth analysis of what may be submerged issues of consumer detriment and dissatisfaction.

There is certainly a role for Ofcom in looking at the provision of content to consumers. This review should explore contracting, the form of payments and whether some forms of contract, in particular those that require signing up for regular payments, are unfair contract terms or otherwise unfair.

Paragraph 8.100 As we saw in section 3, some of the remaining coverage not-spots may be addressed by network sharing agreements, so any decisions about whether regulation might be appropriate should be taken only after the prospects for commercial deployment are clearer. However, it may be that national roaming (where operators pay for the use of another operators’ network) might provide a mechanism to share costs to make the coverage of these areas economically viable.

Comment

The problem of not-spots are not new nor have they been removed by existing network providers either cooperating or competing. We consider ‘not-spots’ to be part of the package of social externalities that should be addressed when looking at the interface between mobile and fixed line telephony in the upcoming review. Such areas of poor coverage should form part of a discussion of the Universal Service Obligation.

Paragraph 8.102 It may be that this issue will be resolved under commercial conditions. However, given the technical feasibility of 999 roaming (which we understand occurs in other European countries), if no progress is made on commercial resolution over a long period, the question of whether to address this using regulation might need to be considered.

Comment

The issue of 999 roaming is a clear example of an issue which is of considerably more importance than any concerns about competition or revenue sharing. It is simply not credible to have a situation where a tourist who suffers a fall in a remote part of Wales, for example, can summon assistance, while a UK tourist would be in no position to do so. Ofcom should set a deadline of six months for operators to develop a 999 roaming arrangement or impose one on them.

Paragraph 8.113 Universal service is an evolving concept, which needs to adapt as technologies and society's preferences change. The rise of mobile usage might have implications on the provision of universal service going forward, and these are some questions which we think merit further consideration. The European Commission will initiate a debate on the future of USO later this autumn, and we are looking forward to engaging with affected stakeholders and to contribute to this debate.

Comment

We are grateful to Ofcom for setting out some of the issues around the provision of Universal Service Obligations in telecoms and the opportunity for some rethinking and reassessment of existing delivery mechanisms. We have not formed a firm view on which mechanism would be best employed in such a review and look forward to the European Commission initiated discussion.

Paragraph 8.114 As we saw in section 3 mobile operators are providing packages that appear to be serving high-end users relatively well. The situation is less clear with low-end customers and particularly unclear with respect to some pre-pay customers.

Comment

We would welcome Ofcom taking an interest in low income consumers. In particular we would be interested to see an analysis of the different pricing schemes that cover those options most used by low income consumers and those by more affluent consumers. We would welcome an assessment of the overall relative charges applied to each group. While solutions to the problems of differential pricing may not be entirely within the grasp of Ofcom we would welcome an informed debate on whether low income consumers are suffering a welfare loss in an unbalanced manner in this particular market.