

Ofcom consultation on mobile citizens, mobile consumers

Appendix

Responses to Consultation QuestionsA4.1 Section 1 - Executive summary

Question 1.1: What are the implications of market change for mobile and wireless services?

We believe that market change will, amongst other things, allow mobile and wireless services to compete in the “home-comms” area as Ofcom discusses - thus blurring the distinction between fixed-line and mobile telephony/data services. This has implications for the regulation of this area, as discussed in our covering letter.

Question 1.2: How are citizens and consumers affected by developments in the mobile sector?

For citizens and consumers, as Ofcom has highlighted, mobile services are a very significant part of modern life for the majority of the population. Thus, developments in the services offered via the “mobile” route have the potential to enhance the welfare and benefit of consumers and citizens. However, as we have discussed in our covering letter, we believe there are also threats to the welfare of current and future citizens and consumers if the market structure and regulation continue without amendment.

Question 1.3: What are the purposes of mobile regulation, and where should its focus lie?

We believe the purposes of mobile regulation should include:

- **Ensuring customers are able to switch easily between service providers and networks; and being vigilant to ensure that they do not become “locked in” to either a network or a service provider;**
- **As part of the above, promoting interoperability, open standards and retail competition;**
- **Ensuring customers are paying no more than necessary;**
- **Ensuring contestability of infrastructure investments;**
- **As necessary, protecting end customers from harmful developments. We see this as less a matter of imposing detailed rules for consumer protection and more a need to have in place meaningful co-regulatory arrangements, as discussed in our covering letter and in response to section 5 below, so that any developing issue can be discussed with and addressed by industry representatives in a timely manner for the benefit of customers and the market.**

Question 1.4: What is the scope for deregulation, competition and innovation in the mobile sector?

We believe there is no scope for deregulation in the short term, given the range of issues discussed in this response. We consider, as discussed in more detail in our covering letter, that increased regulatory requirements on infrastructure providers will be necessary to accelerate competition in retail service provision. However, if and when such an enduring market structure (and appropriate governance arrangements) is in place, we consider that there would be potential for Ofcom to step back from detailed regulation of retail service provision as competition, combined with the mechanisms to allow customers to readily switch between service providers and networks, would ensure that supply offerings tended towards what customers were happy with.

We believe that innovation goes hand in hand with competition and is bound to increase if there is more competition in the market and also where the structure of the market is governed so that someone with an innovative idea on service delivery or network capability is clear on the steps necessary to bring that to market.

A4.3 Section 3 – Today's UK mobile markets

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?

Features that we believe would characterise a well functioning mobile market are as follows:

- **Many different service providers with many different service offerings;**
- **Robust processes in place and well-used - allowing customers to switch to other service and/or network providers and take their existing number with them;**
- **A market structure and governance arrangements that allow new entrants and innovations to be brought to the market in a transparent manner;**
- **Market failures resulting from service provision models that do not find favour with customers, along with market processes (such as supplier of last resort arrangements) that allow for the mass migration of a customer base from one service provider to another in that eventuality.**

While some of these features are present or in development, we think they are not as well advanced as they could be.

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

Following on from the above, the measures to assess whether the market is performing well would be:

- **A range of different service providers and service offerings in existence, with new market entry and market exit continually refreshing the mix;**
- **Ease of switching;**
- **Significant volumes of customers switching;**
- **Existence of a transparent market code that sets out, amongst other relevant information, how new providers can enter the market.**

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?

This is difficult for us to predict but as observed in our covering letter, we do believe there will be a convergence between fixed and mobile services in that mobile network operators (MNOs) are likely to become able to offer a “home comms” service. On the face of it, this would appear likely to give MNOs greater market power and, unless there is suitable regulatory intervention, could undermine the competitive position of service providers using wholesale fixed-line products.

A4.4 Section 4 – Consumers

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?

Echoing the points made in response to the previous set of questions, we believe that there could be a greater number of service providers and service offerings than exist today. In that situation, the available choice, coupled with the ability of a customer to readily switch to another service provider and/or network if they are dissatisfied, would in our view be the best first line means of protection for customer interests. In this scenario, the regulator could take a more high level watching brief over consumer issues, allowing the market to work flexibly. For any developing consumer issues that merit a concerted industry response, we advocate (see our response to section 5 below) the establishment of a co-regulatory body, where appropriate industry representatives can discuss and implement the most cost-effective solutions to the identified issues, with Ofcom having an appropriate level of input into the work of this body.

Where the nature of a consumer issue is such that Ofcom feels it necessary to act unilaterally, we believe that the proportionate regulatory response is, where warranted, to put in place general high level obligations (rather than detailed prescriptive regulation) on the relevant market participants. These are likely to differ between service providers and infrastructure providers, consistent with the aspects of the customer experience that each control. Such high level obligations could be supplemented where necessary with non-mandatory guidelines on the sorts of measures that could be taken.

A4.5 Section 5 - Citizens

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?

The prospects for use of mobile technology in society are far-reaching as this chapter sets out. Communications infrastructure generally has a particular role as part of critical national infrastructure, as do energy networks. While fixed-line communications networks can generally operate when energy networks are not working (on a local basis), as noted at paragraph 5.61, due to the existence of power in local exchanges, the converse is also true as fixed line networks can also develop faults and be unavailable at times when energy networks are working. Mobile networks can also be affected by weather. The wider point here is that there is a fundamental citizen need for these vital network infrastructures to be resilient, as near as possible to universally available in at least a basic form and with sufficient coordination to respond swiftly to threats to citizen well being.

In the energy industry, there is a degree of coordination between market participants on how, for example, customer transfer processes will work, backed by licence conditions that require the market participants to belong to industry bodies that maintain and develop a set of market rules in a transparent manner. These coordination arrangements are used to identify and develop solutions to emerging customer issues – for example, rules on what reasons are valid for losing suppliers (service providers) to object to a customer transferring away from them. At a high level, coordination between service providers seeks to ensure that competitive processes work smoothly so that as many customers as possible are encouraged to exercise their choice in the market in order to look for service packages that best suit their needs. On the infrastructure side, different sorts of

coordination exist: for example - on health and safety matters; the discussion and adoption of design standards; emergency planning; and metering standards.

In the communications markets, we have argued in a number of different areas that similar types of coordination, backed by co-regulatory arrangements, would bring benefits. A number of significant issues affecting citizens are raised in this section of the consultation: such as citizen concerns on privacy and personal security, optimal access for citizens to emergency services when required; geographic and social inclusion in developing communications technologies and content issues. Most of these are not, in fact, restricted to use of mobile technologies. However, as noted in paragraph 5.70, “rapid developments [in technology] can spring surprises”. We therefore believe that Ofcom’s oversight and ability to react to developing citizen and consumer interests would be strengthened if co-regulatory arrangements were in place, which could provide a forum for discussion of the issue and rapidly deliver any necessary changes to industry arrangements.

It appears to us that this type of arrangement is more likely to lead to timely resolution of issues than the current process of Ofcom-led consultation on its own proposals. An industry body comprising representation from all relevant infrastructure and service provider players could be in a better position to debate and cost potential options for dealing with an issue than Ofcom acting in isolation or relying on the process of formal information requests to gather material for a cost benefit analysis. A further benefit of co-regulatory arrangements, backed by a General Condition requirement for service and infrastructure providers of a certain description to belong to them, is that the solution put forward by the body can be imposed (subject to any appeal rights in the governance framework) on all members of the body and subject to enforcement action by Ofcom, if necessary.

In answer to the theme of the questions in this section, therefore, we believe that Ofcom should give serious consideration as to how it is able to engage with the industry to develop and implement solutions to issues of concern to citizens and consumers against the backdrop of the even more rapid technological change that mobile developments are bringing to the industry. In this context, areas where we believe that mandated co-regulatory arrangements would provide an appropriate framework for market development include: numbering issues including common database development and governance; customer switching arrangements; and potentially on interconnection and device standards to promote maximum flexibility for customers to choose between networks and service providers.

A4.7 Section 7 - Scenarios

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

In our view, the most important future trends appear to be:

- convergence of fixed and mobile platforms for “home comms”;
- increase in market power and influence of mobile network operators;
- increasing complexity of communications product retail offerings; and
- increasing richness of mobile content which may, as noted in the consultation bring increasing concerns about privacy and security.

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

We believe the regulatory challenges that will develop or be exacerbated with the development of mobile technology include the following:

- control of market power at different points of the value chain;

- the distinction between the roles of infrastructure and service provider in the relationship with end customers and the appropriate regulatory approach to each;
- the need to develop and maintain the ability for retail customers to switch between networks and service providers and avoid market developments that lead to them being “locked in” to specific networks and/or service providers;
- the need to ensure that market developments are technically coordinated for the benefit of end customers (in our view, this should be through inclusive and transparent governance arrangements);
- the need to promote open standards and infrastructure access to allow a sufficient degree of inter-operability for the benefit of competition and the customer experience.

There are a number of places in the document where it is suggested that developments in mobile technology could lead to the prospect of deregulation – particularly in the fixed line area. We do not believe that a reduction in regulatory intervention will be possible given the challenges outlined above and indeed believe that co-regulatory mechanisms will be needed to address these challenges in a timely and constructive manner. However, if such a co-regulatory body is established, we believe that the outcome could be that detailed issues around the day to day operation of the market would routinely be addressed by this body with Ofcom able to step back from this level of detail and focus on higher level strategic issues.

A4.8 Section 8 – Implications

Promoting competition

Question 8.1: Should Ofcom do more to promote competition in mobile and wireless markets?

Yes. We support Ofcom’s work to develop recipient-led number portability arrangements in the mobile market but are firmly of the view that the further regulatory intervention is needed to promote the role of the service provider such that it becomes more feasible for new service providers to enter the market. As discussed in our covering letter, we believe that Ofcom should seek to establish a market framework – including wholesale access – that supports the service provider role.

As an example of the benefits that greater numbers of service providers could bring to the market, there is a comment in paragraph 8.96 about suppliers (i.e. service providers) being able to offer simpler pricing. We believe that a range of different pricing arrangements is likely to develop if new suppliers are readily able to enter the market. With no regulatory requirement for the MNOs to offer this access, these further competitive pressures are unlikely to develop and, in our view, the sorts of issues that Ofcom raises will need continual regulatory intervention to resolve.

Question 8.2: Ofcom’s strategy in telecommunications is to promote competition at the deepest level of infrastructure that is effective and sustainable. How might this strategy be applied, given future developments in the mobile sector? Under what circumstances, if ever, would it make sense to consider access regulation for mobile platforms?

A number of competing mobile infrastructures now exist but without any obligation to provide access to independent service providers, whose entry into the market seems limited currently. As discussed in our covering letter, we believe that the time is now right for Ofcom to promote further competition in service provision,

which, in our view, would necessarily entail access regulation. With regard to infrastructure competition, we consider that promoting contestability of infrastructure investment, coupled with a form of market governance that oversees the maintenance of standards for interoperability, would be the basic building blocks to ensure that further network investment, if efficient, would be possible.

Question 8.3: What role can competition play in ensuring that future development of the mobile internet provides an open and flexible environment for a wide range of services? Should Ofcom explore open access requirements to ensure opportunities for innovation? What role might 'net neutrality' play in the mobile sector?

As discussed in our covering letter and responses to other questions, we believe that competition in service provision provides benefits to customers through increased choice, responsiveness to customer wishes and increased innovation.

We have also referred in our covering letter to Ofcom's work on NGA, where there is emphasis on the importance of open standards. We believe that similar logic applies in making open standards and access an important area for both the current mobile market and the developing mobile broadband market. With respect to "net neutrality", on the face of it this appears to be an approach that would benefit customers by preserving the ability of application and content providers, and hence of their customers, to have unhindered access to networks.

Setting clear rules for consumer protection

Question 8.4: What role might competition play in addressing questions about transparency of prices, services and contractual conditions offered to consumers of mobile and wireless services? What role should regulation play in addressing these questions?

In a competitive retail market, many different retail offerings could be expected to develop. Not all of these would necessarily survive, but to the extent that customers valued simple and transparent tariff options, those suppliers offering these options could be expected to thrive. Where competition is less effective, it might be expected that regulatory intervention would be required from time to time. Where this becomes necessary, we would always favour an approach of high level requirements supported by non-mandatory guidelines over detailed prescriptive regulation.

Question 8.5: What is the best way to promote content standards and ensure privacy protection for increasingly complex content and transaction services? How will privacy issues fare in a world where services are more personal and more complex?

In our response to questions in section 5 above, we have discussed our view that co-regulatory arrangements would be the best means of providing Ofcom with the means to have a structured dialogue with the relevant industry participants on what new measures might be needed, across the industry, to address emerging issues on content standards, privacy protection and other unforeseen issues affecting the welfare of citizens and consumers.

Adapting regulation to converging markets

Question 8.6: Will the mobile termination rate regime need to evolve or change more fundamentally? What is the best approach to adopt?

We suspect that this regime will need to evolve. We would advocate accounting separation of mobile network and infrastructure costs from the costs associated with retail service provision. This would allow greater transparency of network costs and their relation to charges.

Question 8.7: If competition does not reduce international roaming charges sufficiently, how should regulators respond, if at all?

Question 8.8: How might universal service and universal access need to adapt in a world where we increasingly rely on mobile services? What role might mobile play in universal access delivery in future?

We see merit in reviewing what requirements are set under the Universal Service Framework and how the requirements would best be met. We are aware that this framework is being reviewed at EU level and would expect that Ofcom would undertake its own review at an appropriate point in the future. At this stage, we expect that mobile services will have a place in providing basic “universal” connectivity in a converging market, especially in areas where extension of fixed networks is expensive but mobile coverage is available.

Question 8.9: Can markets and commercial agreements address issues such as ‘not spots’ and emergency access? If not, what role might be played by a regulator to address these issues?

If retail competition is further promoted and infrastructure investment remains contestable, we believe it possible that service providers may be able to link with potential alternative providers of infrastructure in limited geographic areas to increase mobile infrastructure coverage and thus the market may be able to address “not spots”. If this does not happen, we believe that this issue together with emergency access and some of the other issues raised by Ofcom in the consultation could be addressed by means of co-regulatory arrangements, as discussed in response to section 5 above.

Question 8.10: How might access for particular groups (such as the elderly and disabled users) need to evolve in future? What role can competition play in addressing these questions?

Our thoughts on this issue are similar to those noted in response to question 8.9 above: in other words, greater encouragement of retail competition might lead to offerings tailored for specific markets; and to the extent that this did not happen, a viable fallback would be to use co-regulatory arrangements to seek solutions from the market as a whole.

Our proposed way forward

Question 8.11: Do you have any comments regarding our proposed way forward and the objectives of the next phase of this Assessment?

We support Ofcom’s intended approach to the next phase of its assessment of the mobile sector i.e. dialogue with stakeholders, further analysis and the development of a proposals document. We believe it will be helpful, as Ofcom develops its proposals, for it to clarify the extent of its powers to apply regulatory remedies in the mobile sector. If action is felt to be needed, yet Ofcom is uncertain that it has powers to act, it could be that a reference of the market to the Competition Commission would result in consideration of remedies not available to Ofcom. It is worth noting that in Ofcom’s recent strategic review of the (fixed line) telecoms market, the threat of such a reference was instrumental in obtaining Undertakings from BT that underpinned significant structural developments that are easing the competitive situation in that market.