



**TELEFÓNICA O2 UK LIMITED RESPONSE TO OFCOM'S REVIEW OF QUALITY OF SERVICE
INFORMATION PHASE 1: INFORMATION ON QUALITY OF CUSTOMER SERVICE**

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A *Telefónica* company

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TELEFÓNICA O2 UK LIMITED RESPONSE TO OFCOM'S REVIEW OF QUALITY OF SERVICE INFORMATION PHASE 1: INFORMATION ON QUALITY OF CUSTOMER SERVICE

1. O2 Telefónica UK Ltd ("O2") welcomes the opportunity to respond to Ofcom's consultation on Quality of Service Information¹.
2. As Ofcom will be aware, O2's interest in this matter arises from its position as a mobile network operator and broadband provider. Our comments are provided in response to the proposal to extend the quality of service direction to cover mobile and broadband providers.
3. At the outset, we want to make it clear that O2 believes improving customer satisfaction is critical in achieving commercial success. This is because, in our experience, customers *do* vote with their feet – the market mechanism works well in that it rewards providers who provide a good customer experience, and punishes those that do not. Accordingly, improving its customer satisfaction score is a key O2 performance indicator, since it is seen as the key way of differentiating its offering and attracting and retaining customers.

Executive Summary

4. O2 has grave concerns at the approach that Ofcom appears to have taken on this issue:
 - little evidence has been presented supporting regulatory intervention in the way that Ofcom is proposing. Indeed, the evidence that has been presented supports the notion that no intervention is required. There is no analysis of whether the absence of quality of service information is, in fact, resulting in consumer detriment, or any distortion of competition, and no attempt has been made to quantify either of these things;
 - it is simply assumed that the publication of quality of service information would be a good thing - there is no recognition of the distorting effects that the publication of such information may have (for example, providers might modify their behaviour simply to record higher scores at the expense of other aspects of customer service). This is likely to reduce the value of information that is made available, even to the point where it is misleading; and
 - Ofcom's assumed costs of reforming the scheme are simply not credible. Much of the data that Ofcom is proposing should be published simply do not exist. Providing the infrastructure to gather, audit and publish the information would run into millions of pounds and these costs would ultimately be passed on to consumers. Industry would be diverted away from developing and providing services that consumers want, or other initiatives that have a clearer public benefit.
5. O2 is strongly of the view that Ofcom has not presented a case for regulatory intervention. Ofcom needs to go back to the drawing board and consider properly the circumstances under which it should intervene to require the industry to publish quality of service information, and whether those circumstances arise in practice. Our present view is that the market mechanism is working well. O2's commercial success is a direct result of providing customers what they want, reflected in its high customer satisfaction scores. Our experience is that consumers do vote with their feet. Ofcom should have more faith in the healthy state of competition in mobile and broadband, and resist the temptation to be seen to be "doing something" in circumstances which do not merit intervention.
6. We set out our concerns in more detail, below. In view of these, we have decided that it would be inappropriate to respond to the detailed questions about implementation that Ofcom has asked. Clearly, if the case for intervention has not been made (and we are firmly of the view that it hasn't

¹ Review of quality of service information Phase 1: Information on quality of customer service, 17 July 2008



been), then issues of implementation do not arise. However, we have responded to certain of the other questions in the attached Annex.

Legislative background

7. It is, of course, the case that, when carrying out its regulatory functions, Ofcom must comply with its statutory duties. In particular, section 3(3) of the Communications Act 2003 (“the Act”) requires Ofcom to have regard to principles under which regulatory activity should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. Section 7 of the Act also requires Ofcom to carry out impact assessments where Ofcom is proposing to do anything for the purposes of, or in connection with, the carrying out its functions, and where it appears to Ofcom that its proposals are important. O2 is of the view that both sections are relevant to the matter under consideration in this consultation and we presume that Ofcom is of the same view.
8. It is also worth noting the standard that Ofcom’s analysis is expected to meet when carrying out its functions. This has been set out most recently in the Competition Appeals Tribunal judgment on number portability²: Ofcom’s analysis and decision making must be able to bear “profound and rigorous scrutiny”.
9. With this in mind, our detailed comments on the relevant parts of the consultation document are set out below.

Evidence in support of extending the quality of service direction

10. Section 4 of the consultation document considers whether the scope of the existing quality of service direction should be amended and imposed on mobile and broadband providers as well as fixed providers. These fundamental issues are afforded nineteen paragraphs in the consultation document (ie paragraphs 4.3 – 4.21). The evidence presented in favour of extending the scheme to mobile and broadband providers appears to be as follows:
 - i. Paragraph 4.5 refers to Ofcom research which, says Ofcom, shows that consumers are likely to value information on comparing customer service levels. For example, Ofcom reports that 44% of mobile customers said they were likely to consider shopping around if information comparing customer service levels were made available.

However, it is instructive to note what Ofcom said at the time that the research was published.

The research referred to in paragraph 4.5 can be found in section 9 of Ofcom’s Consumer Experience Research, published in November 2006. The commentary at the beginning of section 9 of the research is particularly revealing:

“In each of the three markets tested, a series of initiatives and ideas were put forward as potential ways in which Ofcom could possibly play a role in the market – these were termed ‘Intervention Scenarios’. The scenarios had two streams:

- impact on predicted likelihood to switch;
- impact on people’s likelihood to start shopping around.

When looking at these responses the focus is on those ‘certain to’ or ‘very likely to’ either switch or shop as a result of each scenario. It should be noted that the impact of the intervention scenarios tested is at a fairly low level overall.” (emphasis added)

² See paragraphs 35 – 49 of the judgment at http://www.catribunal.org.uk/documents/Judgment_1094_180908.pdf

So, in its analysis of its own research in November 2006, Ofcom said that the focus should be on the proportion of customers *certain* or *very likely* to switch or shop around, if certain things happen, like information being made available comparing customer service levels. This seems a sensible approach in interpreting this type of consumer research. It is notoriously difficult to rely on consumer research when determining policy, because consumers do not always behave, in practice, in the same way that they indicate when faced with hypothetical questions. One way of guarding against potentially misleading consumer research is to disregard responses which do not indicate clearly how consumers might behave in practice, by discounting anything other than very clear preferences.

Accordingly, Ofcom found that, actually, the impact of the proposed scenarios “is at a fairly low level”. For example, the proportion of mobile customers who were certain or very likely to shop around if information was available comparing customer service levels was 12% (10% “very likely” plus 2% “certain”). The policy prescription of all of this seems fairly clear: there was no need for Ofcom to intervene to make these scenarios happen, since their impact would be low. That is the only reasonable conclusion from this research, and, indeed, it is the one which Ofcom, itself, seemed to draw in 2006.

Turning to the current consultation, it seems that the goalposts have moved somewhat. Instead of considering the proportion of those consumers *certain* or *very likely* to switch or shop around – which is what Ofcom had invited readers to focus on when reporting its research findings in November 2006 – Ofcom now appears to take into consideration, in addition, those consumers who were *likely* to switch or shop around. This is how the figures in paragraph 4.5 of the consultation document have been compiled. For example, the 44% of mobile consumers that were likely to shop around if information was available comparing customer service levels is made up of the 12% who were “very likely” or “certain”, plus an additional 32% who were merely “likely”. No reason is presented by Ofcom as to why this additional category is now thought to be worthy of focus, and why Ofcom has ditched its previous, more prudent, approach on interpreting consumer research.

O2 is firmly of the view that, if Ofcom is to rely on these findings in the present consultation, it must justify its new approach. The need for Ofcom to be *consistent* in the use of data was highlighted in the recent Competition Appeals Tribunal judgment on number portability:

“the Tribunal’s view is that it was incumbent on OFCOM to ensure that the figures they adopted were better justified and more rigorous than was the case. No compelling evidence was adduced by OFCOM as to why they had departed from the costs used in the context of mobile call termination rates.”³

If the reason for Ofcom’s change in interpreting its own research is opaque, the same cannot be said about the consequences of that change in interpretation, and the inference Ofcom draws. The 12% finding has mushroomed to 44%. Further, Ofcom’s previous conclusion that “the impact of the intervention scenarios tested is at a fairly low level overall” has been disregarded. Ofcom appears to have made a complete a u-turn and now considers that the research actually *justifies* regulatory intervention. O2 disagrees strongly with Ofcom’s new approach and finding on this issue.

- ii. Paragraph 4.6 records that 50% of calls to Ofcom’s Advisory Team were about “customer/supplier relationship issues”. These included matters that Ofcom is proposing should be the subject of the quality of service direction. The suggestion is that it is the fact of these calls that justifies Ofcom’s proposals to extend the scope of the quality of service direction. However, there is no analysis at all to support this suggestion. In these circumstances, O2 does not see how Ofcom can rely on this disparate piece of information in seeking to expand the scope of the quality of service information.
- iii. Paragraph 4.7 similarly records that a minority of dissatisfied customers are dissatisfied about customer service. Again, the suggestion is that this fact is some sort of justification for

³ See paragraph 123 of the judgment at http://www.catribunal.org.uk/documents/Judgment_1094_180908.pdf



expanding the scope of the quality of service direction and, again, there is no explanation of why this should be. For the record, Ofcom's mobile sector assessment consultation document records that 94% of mobile subscribers are satisfied with their service and that this proportion is increasing⁴.

- iv. Ofcom notes, in paragraph 4.8, that its research in The Consumer Experience 2007 indicated that a significant minority of consumers found it difficult to compare quality of service information. O2 agrees with Ofcom that this information might be relevant when considering the scope of the existing direction. However, it seems to O2 that a number of other conditions must be met before intervention may be justified:
 - a. It must be shown that consumers actually make purchasing decisions using this information. Clearly, if consumers do not make decisions using this type of information, then producing more of it would be of no assistance. Further, the evidence appears to suggest that consumers do not, in fact, use this information. As we have noted above, in its Consumer Experience Research, published in November 2006, Ofcom concluded that the impact of publishing information comparing customer service levels was "at a fairly low level". In addition, in section 8 of the same publication, Ofcom notes the importance of word-of-mouth recommendation in the shopping process, concluding:

"As evident in the previous section, one of the most important influences on participation was testimony from other people within a social network. The qualitative research reveals that personal sources of information not only have the potential to overcome false perceptions that deter shopping (particularly as they can be offered rather than sought), they also play a critical role during the shopping process itself. Opinions of friends, family and colleagues are important in identifying options for consideration, in testing these options, in justifying a preferred option or even as a way to short-cut the decision by seeking a recommendation.

This research also shows that much of what underlies the significance of word-of-mouth has to do with trust – friends and family act as a proxy guarantor for the trustworthiness of a supplier precisely because they are a trusted source themselves. While information provided by suppliers is often thought to be informative, it is less likely to be trusted."

O2's own experience is entirely consistent with this research finding.

This tends to suggest that the publication of quality of service information would not be used by consumers, who rely, instead, on trusted personal sources. Thus, the available evidence suggests that the expansion of the quality of service direction is not justified; and
 - b. Even if it were demonstrated that consumers do use quality of service information to make purchasing decisions, it would need to be shown that the minority who find it difficult to make comparisons, make poor purchasing decisions as a result; otherwise, there is nothing to gain from the publication of more information. Ofcom has presented no evidence of this at all.
- v. In paragraph 4.9, Ofcom notes that an Ofcom Consumer Panel report found that a small minority of consumers would use consumer satisfaction scores (which Ofcom describes as qualitative information) if they were to change supplier. It is not clear how relevant this piece of information is, in a consultation about the scope of the quality of service direction (which provides for the publication of *quantitative* information)
- vi. Ofcom notes the low usage of the TopComm information in paragraph 4.10 of the consultation and remarks that this doesn't necessarily prove that the publication of quality of information is

⁴ Mobile citizens, mobile consumers. Adapting regulation for a mobile, wireless world. 28 August 2008



unnecessary. O2 takes the point, but notes that the low usage is entirely consistent with the notion that such publication *is* unnecessary. Ofcom goes on to provide other possible explanations of the lack of use of the information, but does not appear to have tested any of its hypotheses.

vii. In paragraph 4.11, Ofcom records that it is carrying out further research to establish whether customers take quality of service information into account when choosing or changing supplier. O2 has the following comments on this revelation:

- a. As we note above, Ofcom has already carried out this type of research in its Consumer Experience Research, published in November 2006, in which it concluded that the impact of publishing information comparing customer service levels was “at a fairly low level”; and
- b. The fact that it is currently carrying out further research appears to demonstrate that Ofcom does not believe that there is sufficient evidence, at the moment, to support expanding the scope of the quality of service direction. If there was, why carry out further research?

viii. Ofcom hypothesises, in paragraph 4.12, that the publication of quality of service information could act as an incentive on industry to maintain and improve standards. Ofcom presents no evidence at all to test this theory.

ix. In paragraph 4.13, Ofcom goes further and states:

“On this basis, consumers have the potential to gain from the added competition between providers and the improved quality of service that publication of information *brings*” (our emphasis).

So, it appears that, in the space of a single paragraph, Ofcom’s (untested) *theory* that the publication of quality of service information would improve the competitive process, appears to have mutated into an *assertion* that this will happen. Again, no evidence at all is presented in support of this assertion.

x. Paragraphs 4.14 – 4.23 constitute a discussion about conditions for competitive markets, particularly the need for consumers to be fully informed, and the problems that service providers with good customer service might experience in informing consumers of that fact. O2 makes the following remarks:

- a. In competitive markets, consumers face costs in acquiring and processing information. On this basis, it is simply not rational for consumers to base their purchasing decisions on a *complete* set of information. Rational consumers should, instead, base such decisions on a subset of information, less than the complete set (“the rational set of information”). In O2’s view, Ofcom’s policy in this area should be governed by the extent to which consumers’ decision making information falls short of this rational set of any information, and the reasons for any shortfall. Ofcom has not carried out any such analysis;
- b. Ofcom should recognise the extent of competition in each of the markets it is considering in this consultation. For example, Ofcom has recently noted that⁵:

“The UK has a thriving and competitive mobile phone market, with five network operators and many other providers.

Over the last few years the cost of deals has fallen while call and text allowances have increased.

⁵ <http://www.ofcom.org.uk/media/features/switchmob>



One reason is that mobile companies have to provide competitive deals to keep you from switching to a rival brand.

But switching from one to another should be easy and you can even take your existing number with you.”

O2 concurs with this, entirely. As noted above, Ofcom’s recent mobile sector assessment consultation document⁶ records the high (94%) and increasing proportion of mobile customers that are satisfied with their service.

It would seem, then, that the absence of quality of service information has not had an adverse effect on the extent of competition in the mobile sector, or on the attainment of high customer satisfaction levels amongst consumers.

- c. In fact, providers have little difficulty in demonstrating to consumers that they are able to provide a good level of customer service, with reference to research and analysis carried out by independent, well known and trusted third parties.⁷

Costs of expanding the scope of the quality of service direction

11. As we set out above, by virtue of section 3 of the Act, it is a statutory requirement that the benefits of any proposed regulatory intervention need to be balanced against the costs. In the words of the Competition Appeals Tribunal in the recent number portability case, “it is a matter of proportionality”⁸. In O2’s view, there are likely to be two broad areas of cost (in the widest sense) of expanding the quality of service direction:
 - i. the possible distorting effects of publishing specific information; and
 - ii. the pecuniary cost of compiling, validating and publishing information
12. Ofcom appears to have considered only the latter, to date (in O2’s view, wholly inadequately). We cover both of them, below.

Potential for publication of quality of service information to distort competition

13. If Ofcom concludes that there is likely to be a benefit in publishing quality of service information, it needs to consider whether a regulatory obligation to publish such data would be likely to distort the behaviour of service providers in a way that would not benefit consumers. This is because, whichever quantitative measures are chosen, they act only as a proxy for the quality of service actually provided – the quality of service is, in practice, a far more complex thing than the sheer statistics could reveal.
14. An example illustrates the point. One of Ofcom’s proposed criteria for publication is the “average time taken to answer a customer’s call in minutes”. If providers were required to publish comparable information, which would feature in “league tables”, their incentives would be distorted and more emphasis would be placed on this metric. This is likely to lead to deterioration in other aspects of service, not subject of a publication requirement. For example, some providers may take less time to deal with customers’ enquiries than is necessary, in order to release customer service staff to answer calls more quickly. This might result in a worse customer experience. However, importantly, that would not be picked up in the information published. There are bound to be other trade offs that providers would utilise, all with the broad objective of boosting performance in the criteria which are subject of the publication requirement, at the expense of other aspects of service (whether they can be quantified or not).

⁶ Mobile citizens, mobile consumers. Adapting regulation for a mobile, wireless world. 28 August 2008

⁷ See, for example: <http://www.visit4info.com/advert/Virgin-Mobile-Customer-Satisfaction-Virgin-Mobile/15924> and <http://www.visit4info.com/advert/O2-Home-Broadband-No-1-for-Customer-Satisfaction-O2/63115>

⁸ See paragraph 51 of the judgment at http://www.catribunal.org.uk/documents/Judgment_1094_180908.pdf



15. Further, any attempt by a service provider to rely on their performance in the published criteria is likely to be met with counterclaims from other providers about other aspects of the quality of service provided (which may or may not be tested by third parties). More heat than light is likely to be generated, and consumers would be likely to be caught in the middle of the cross-fire, none the wiser about the service provider that is, actually, providing the best customer service. Doubtless Ofcom would be drawn into such a debate. Ofcom ought to consider, now, how it would respond to questions about which of the providers was providing the best service.
16. For evidence about the likely behaviour of providers, if a requirement to publish information was established, and the resulting confusion, Ofcom need look no further than the experience of the publication of mobile network operators' call success rate survey administered by Oftel⁹ and the continuing debates about the merits and value, or otherwise, of the publication of hospital waiting lists, school league tables and other performance indicators ushered in on the promise of providing clarity to citizens and consumers.

Cost of compiling, validating and publishing the data

17. In section 5 of the consultation document, Ofcom estimates the "one off implementation costs" of introducing the new parameters to be between £750 and £52,500 per provider, on the basis of "a small amount of information from existing Forum members [ie fixed providers]". It is instructive to note that Ofcom doesn't seem to have sought cost estimates from mobile or broadband providers that it is proposing to be brought under the scheme.
18. O2 believes that the estimates understate the true cost by several orders of magnitude. [X<]
19. Further, to the extent that some of the data that Ofcom is suggesting ought to be published are captured by our systems at the moment, there is nothing to suggest that they are comparable with similar data that other providers might record. To the extent that there are differences, there will be costs associated with introducing a common standard. None of these substantial costs have been identified by Ofcom.
20. In addition to the set up costs, an information publication scheme is bound to incur significant compilation, auditing and publication costs. These have been estimated by Ofcom in Annex 5 of the consultation document. Without knowing the precise definition of the information proposed to be published, it isn't possible to comment on these cost estimates.
21. O2 has refrained from undertaking any additional work on estimating set up and ongoing costs until such time that a proper case for regulatory intervention is made.

Conclusion

22. O2 is strongly of the view that the evidence presented by Ofcom manifestly fails to make the case for expanding the scope of the quality of service direction. The evidence that has been presented does not support the view that consumers would use such information in their purchasing decisions. No evidence at all has been presented that the lack of such information has led to poor purchasing decisions. In its attempt to support regulatory intervention, Ofcom, instead, appears to rely on disparate pieces of information without adequate reasoning, and makes assertions that it has simply not tested.

⁹ See, for example: http://www.mobilenewscwp.co.uk/archive/45119/asa_rules_against_vodafone.html



23. Further, Ofcom appears to accept that there is presently little evidence to justify intervention. This is amply demonstrated by the fact that Ofcom is *currently* carrying out further research into the extent to which customers take quality of customer service into account when choosing or changing suppliers. Why else would Ofcom carry out additional research, unless the current evidence does not support its regulatory proposals?
24. In O2's view Ofcom has not considered at all the likely distorting effects of expanding the current direction. And its cost analysis appears to be wrong by several orders of magnitude.
25. It is very clear to O2 that the case that Ofcom has presented falls far short of the requirements of section 3 of the Act, and that Ofcom's analysis fails to stand up to the "profound and rigorous scrutiny" that it must satisfy before regulation can be imposed¹⁰.
26. In O2's view, Ofcom needs to assess the extent to which the information consumers use to make purchasing decisions (in each of the markets under consideration) falls short of the rational set of information, and the reason for any difference. To the extent that there is a difference, the extent of the resulting sub-optimal purchasing decisions should be quantified, as far as possible, as a means of estimating the level of consumer detriment. The results of this analysis would inform Ofcom of the potential benefits of regulatory intervention (to the extent that it could reasonably expect to address such detriment). A sensible assessment of the potential costs of such a scheme could then be estimated by engaging with all relevant providers.
27. In the absence of this type of analysis, our present view is that the market mechanism is working well. O2's commercial success is a direct result of providing customers what they want, reflected in its high customer satisfaction scores. Our experience is that consumers do vote with their feet. Ofcom should have more faith in the healthy state of competition in mobile and broadband, and resist the temptation to be seen to be "doing something" in circumstances which do not merit intervention.

¹⁰ See, for example, paragraph 49 of the Competition Appeals Tribunal judgment on number portability at http://www.catribunal.org.uk/documents/Judgment_1094_180908.pdf



Answers to specific questions

Question 1:

Do you have any views on Ofcom's proposal to review the existing TopNetUK scheme, which could help inform this piece of work?

O2 would be happy to assist in the review of the scheme. The starting point for any review should be to ask the question: is regulatory intervention merited? On the basis of the evidence available at the moment, O2 sees no justification for intervention. We note with concern that Ofcom wishes to "explore ways to improve the current initiative", which rather suggests that Ofcom has already made up its mind, ahead of any review. This is regrettable.

Question 3:

Do you agree with Ofcom's proposed timetable for phase one of our review of quality of service information?

No. Ofcom has failed to make the case for regulatory intervention and needs to go back to the drawing board and undertake a proper cost benefit analysis capable of withstanding profound and rigorous scrutiny.

Question 4:

Should Ofcom require industry to publish QoS information?

Absolutely not. Ofcom has manifestly failed to justify regulatory intervention in this way.

Question 5:

Should Ofcom encourage the development of more or more detailed consumer surveys focusing on customer service?

Ofcom should resist the urge to be seen to be "doing something" unless there is a demonstrable need for intervention. On the basis of the evidence presented so far, intervention would not be justified.

Question 14:

If we considered it was appropriate to continue requiring providers to publish QoS information – and that the existing QoS Direction should be amended – how could the information requirements be defined and measured?

If regulatory intervention were justified (and, without wishing to labour the point, it hasn't been), then the information requirements should be relevant. For example, in circumstances where providers are promoting different methods for customers to manage their accounts (by the internet, for example), then a calls answered metric may not be relevant.

Question 20:

How much would it cost to introduce and maintain a new parameter on resolution of complaints (option 3a)?

Question 21:

How much would it cost to introduce and maintain a new parameter on total number of complaints (option 3b)?

[&<]



Question 24:

As a provider, is data on complaints something you already collect?

Not in accordance with Ofcom's proposed definition. O2 analyses data about complaints that go beyond the first escalation point.

Question 25:

How could we ensure complaints were being recorded in an accurate and comparable way, and how could we avoid the potential for gaming by providers?

The production of comparable complaints data is likely to cost millions of pounds, because it is likely that the methods employed by different providers to analyse complaints information will be different. Accordingly, many providers will have to amend or introduce new systems to compile data on a like-for-like basis. [3<]

If comparable information is produced, it can reasonably be expected that an incentive will be created for providers to manipulate data and/or distort their service offering simply to improve their performance in the resulting "league tables". Thus, a regulatory requirement to provide such data is likely to have a distorting, negative effect.