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Dear Alan

Review of ADR and complaints handling processes

The Mobile Broadband Group (MBG) welcomes the opportunity to respond to Ofcom's review of ADR and complaints handling processes. Before making any specific points about the review, it would be worth looking at the wider picture and the context in which these proposals are set.

Ex ante, sectoral regulation is based on the premise that the absence of sector specific rules is likely to lead to market failure and the foreclosure of opportunities for potential market entrants. Sector specific regulation is a cost borne ultimately by the customers of the regulated entities, over and above general regulation. Because sector regulation has such a dramatic impact on the markets it regulates, it was introduced on the basis that it was necessary to liberalise markets but that it would otherwise be lightly used to address very specific sectoral issues. The EU Telecoms Framework has this principle at its core. Ofcom was created with the firm understanding that it would be light touch.

The MBG is finding it increasingly hard to reconcile Ofcom's approach to sectoral consumer rules with these fundamental principles. This review, taken together with initiatives on, for example, quality of service information, broadband speeds, non-core charges and mis-selling rules add up to a very significant market intervention that is burdensome and bears significant risk of unintended consequences and distorting the effective functioning of markets that are fundamentally not failing. Taking the mobile market as an example, market penetration has continued to rise (70m active subscriptions). New products are emerging, such as mobile broadband, prices are falling overall and there is vigorous competition to retain existing customers and acquire new ones, as partially evidenced by the numbers of

customers churning between networks in search of better deals. The public churn figures mask the total level of activity, as customers are also churning within networks onto more favourable tariffs. Levels of satisfied customers, as recorded by Ofcom, have always exceeded 90%[1]. This admittedly leaves a percentage of customers that are not satisfied. The market is not perfect – what market is? – but all these indicators taken together point to a market that is working pretty well. Moreover, the overwhelming incentive of competition is in place to encourage market participants to treat customers well in terms of price, innovation and service.

Taking a related situation, to illustrate why we disagree with the direction this review is taking, Ofcom has recently argued vigorously against the creation of a central European regulator with the power to countermand and replace the decisions of national regulatory authorities. One of the strongest arguments (with which the MBG agrees) is that the relevant competence and understanding lies with the NRA and not at the Commission. The MBG argues that the same applies in the UK telecommunications market. Ofcom's increasing efforts to micro-manage the internal workings of regulated companies are inappropriate and doomed to failure. The expertise lies within the organisations that deal with these matters on a daily basis not with the regulator. Those that perform poorly and treat their customers badly are found out and, quite properly, punished in the market.

In light of all these contextual factors, the MBG, even though it can support some proposals, fundamentally disagrees with the proposed approach.

The MBG supports the principle of ADR. We agree that it is beneficial for the customer to have access to a simple back stop facility that would obviate the need to go to court in the event of an unresolved dispute. But ADR was always intended to be just that – a dispute resolution facility – not an alternative customer services division.

Ofcom's proposal that the access time be reduced from twelve weeks to eight is a reasonable suggestion, if the benefits demonstrably outweigh the costs, but we strongly disagree with the notion that ADR should be brought into the discussion within five days of a complaint being lodged. There is a significant risk that this will deflect the customer towards ADR prematurely, only for the ADR body to disappoint the customer when it subsequently becomes clear that the customer's case has not reached a point where formal ADR is appropriate. This will actually increase resolution times rather than reduce them. There is also the risk (and it happens) that the customer will exploit the knowledge that a provider will have to pay hundreds of pounds on ADR fees to seek an unjustified settlement. This will be counter to the goal of improving the efficiency and effectiveness of ADR.

Furthermore, the suggestion that Ofcom will mandate that all 'complaints' have to be acknowledged in writing seems to be an extraordinarily disproportionate regulatory intervention. The MBG agrees that complaints handling procedures should be efficient and that customers should be treated fairly but market actors should be left to decide for themselves whether such a potentially costly process would be suitable for their customer base.

[1] e.g. p163 Ofcom Communications Market 2006, 94% satisfied with mobile service overall (of which 47% very satisfied) and p.29 OCM 2008, 94% satisfied with mobile service overall (of which 59% very satisfied)

The same goes for the prescriptive way in which Ofcom is suggesting that complaints should be logged, recorded and stored, which at worst could result in the total re-engineering of companies' internal business processes – at enormous cost and disruption. While we can see some attraction to Ofcom of a unified high level Code across the industry rather than individually approved codes, such an intervention is not without risk. If it is to proceed, the code must focus on outcome rather than process (for example, its presumption that there should be no more than four escalation points is an unnecessarily prescriptive level of detail). The contents of any high level code will need careful consideration, since the risk of the regulator presuming its own solutions are best are high. Furthermore, the regulations on complaint recording go too far – particularly in an industry that is changing so fast. Four play (cable, telecoms, Internet and mobile) and other convergent organisations are likely to have completely different requirements and internal processes to, say, a virtual ISP. Customer service experts need the flexibility to design internal processes that suit their businesses and customers; they don't need processes that are hide-bound by regulation and that have to be shoe horned into a range of diverse organisations across the telecommunications industry.

Individual MBG members will have more accurate information about their own circumstances but the overall picture is that the cost benefit analysis on this aspect of the proposals does not reflect a realistic estimate of the costs of any re-engineering that could be incurred.

Ofcom also raise some questions about Cisas and Otelo. The first is whether it is beneficial for there to be a choice of ADR providers. Secondly, Ofcom raise concerns about the awareness levels among consumers of the ADR process.

The MBG strongly supports the principle of having a choice of provider. As Ofcom points out, it is in control of the minimum quality standards required and this protects the consumer's interests. Having choice encourages the ADR providers to supply an efficient and cost effective service.

With respect to awareness levels, the MBG notes that Ofcom research revealed around 15% unprompted awareness of at least one ADR scheme. The MBG agrees that customers have a right to know their rights and that providers have a duty to make this information available through reasonable measures (for example on web sites). However, we are conscious that in other areas, measures are being discussed to impart proactively more and more information about terms and conditions. As a consequence, we believe that any efforts to improve customer knowledge should be focused on those that are actually trying to resolve a complaint, when the information is most relevant to the customer. For the reasons stated earlier, we do not support the information being proffered too early in the process. This would risk the ADR process becoming a substitute for normal complaint resolution processes and ultimately be counterproductive. The MBG would support reasonable measures for increasing general awareness (although not a mass advertising campaign funded by industry – the size of the problem does not merit such a response).

In summary, the MBG acknowledges that it is appropriate for Ofcom to periodically review the ADR arrangements and we agree that it may be timely and practical to reduce the waiting time to 8 weeks, if the benefits demonstrably outweigh the costs. We also see that a standardised high level code of practice is more efficient from Ofcom's perspective than individually approved codes (although, as mentioned, we do have concerns about the prescriptive nature of the proposed contents). Overall, though, we strongly disagree with this

increasingly prescriptive approach to complaints handling regulation. It is disproportionate and an unwarranted intervention into a market that is fundamentally working.

Yours sincerely

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