



**TELEFÓNICA O2 UK LIMITED RESPONSE TO OFCOM'S REVIEW OF ALTERNATIVE  
DISPUTE RESOLUTION AND COMPLAINTS HANDLING PROCEDURES**

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*A Telefonica company*

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## **TELEFÓNICA O2 UK LIMITED RESPONSE TO OFCOM'S REVIEW OF ALTERNATIVE DISPUTE RESOLUTION AND COMPLAINTS HANDLING PROCEDURES**

### **INTRODUCTION**

1. Telefónica O2 UK Limited (O2) welcomes the opportunity to respond to Ofcom's review of Alternative Dispute Resolution (ADR) and complaints handling procedures (the Consultation).
2. O2 has invested heavily in customer services and we are proud to be delivering leading customer satisfaction levels within our industry. However, this is not cause for complacency and if our customers have reason to complain, then we want to be able to deal with those complaints swiftly and efficiently.
3. We have carefully considered Ofcom's proposals, not only within the context of the Consultation but also against the background of Ofcom's "Mobile citizens, mobile consumers" review (MSA)<sup>1</sup> and our own experience of (and plans for) serving our customers.

### **EXECUTIVE SUMMARY**

4. We are committed to delivering a great customer experience and we believe that, regardless of regulation, if Ofcom's proposals present a sound business case for improving customer experience and customer satisfaction for our customers, then we ignore them at our peril – our customers and the market mechanism will punish us.
5. We appreciate the argument for moving from 12 weeks to 8 weeks in respect of ADR (provided it improves satisfaction levels and end to end resolution times) and, we understand there may be some attraction from Ofcom's perspective of a single Code of Practice (although, if such an approach is to be pursued, it must avoid the regulatory risk of dictating operational processes in detail and hence distorting the competitive dynamic). However, we have fundamental reservations about Ofcom's proposals:
  - i. *We don't think some of the proposals will improve things for our customers.* [X] This is not to say that customers should not be informed about ADR, they should. But the issue is to ensure

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<sup>1</sup> Mobile citizens, mobile consumers-adapting regulation for a mobile, wireless world", Ofcom, August 2008. <http://www.ofcom.org.uk/consult/condocs/msa08/msa.pdf>



customers are informed about ADR in an appropriate manner and at an appropriate time – i.e. at a point which does not induce confusion between an independent “dispute” resolution process and our own complaint handling processes (which should be exhausted before the matter falls within the independent ADR remit).

ii. [X]

a. [X];

b. Ofcom suggests that the benefit of these changes will be to alleviate (at least to some extent) the harm/ detriment that may arise for some customers, address “potential” problems around access to ADR and furthermore to assist it in compliance investigations. However, as Ofcom notes, any such benefit is unquantified – and may give rise to issues such as premature notice of ADR which can create detriment in its own right. [X];

c. Ofcom has provided no evidence that any enforcement has been hampered by existing record keeping – and furthermore, the Consultation suggests that it is only some providers with whom Ofcom has concerns. In this latter respect, Ofcom should first raise its concerns with those operators rather than introduce new rules on all;

d. Ofcom’s impact assessment also appears to conclude that the costs to industry of its proposals are reasonable since the costs are a percentage of overall revenue. This is an incorrect application of the principle of proportionality. By virtue of section 3 of the Communications Act, it is a statutory requirement that any proposed regulatory intervention needs to be proportionate to the policy aim. Further, benefits must outweigh costs - particularly in relation to the size of those costs. In the words of the Competition Appeals Tribunal in the recent number portability case, “*it is a question of proportionality*”<sup>2</sup>.

iii. *Ofcom’s definition of “complaints” is too widely drawn for the purposes of any general condition – and this has considerable impact on the costs arising from Ofcom’s proposals.* The scope of what Ofcom is trying to regulate (by virtue of its definition of “complaints”) – is too widely drawn – such that it will capture scenarios beyond those that we understand Ofcom

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<sup>2</sup> See paragraph 51 of the judgment at [http://www.catribunal.org.uk/documents/Judgment\\_1094\\_180908.pdf](http://www.catribunal.org.uk/documents/Judgment_1094_180908.pdf)



is seeking to address<sup>3</sup>. As such, if Ofcom is to proceed with its proposals, the scope of the definition must be significantly reduced. There is no evidence that Ofcom needs to intervene to the degree that its current definition of “complaints” would entail (or indeed at all in our view).

**iv.** *We find the impact assessment undertaken by Ofcom is unsatisfactory.* Ofcom’s analysis is expected to meet certain standards when carrying out its functions. This has been set out most recently in the Competition Appeals Tribunal judgment on number portability<sup>4</sup>: Ofcom’s analysis and decision making must be able to bear “profound and rigorous scrutiny”. For example:

- a. Ofcom’s evidence that its proposed changes will result in a “better” outcome for consumers must be heavily caveated and is by no means certain - as we explain, some elements may actually create detriment;
- b. Ofcom's complaints statistics are interesting in so far as they go - but as ever, there are always several perspectives. For example, Ofcom is concerned that its Tracker Surveys for 2006 and 2007 show low awareness of ADR (81% and 83% respectively were unaware). However, is it really surprising that awareness is at these levels given that the vast majority of customers are satisfied (94% according to Ofcom’s latest figures)<sup>5</sup>? With these satisfaction levels, relatively few people have the need to use a dispute resolution process – which, after all, is the backstop if the provider cannot resolve matters – and so why should there be high awareness of a process which customers have had no need to use?<sup>6</sup>. Furthermore, we are concerned that Ofcom has made no analysis of the complaints data in the context of the mobile market (or indeed to benchmark against other industries). For example, in markets such as telecommunications with high innovation and change, there may well be a natural tendency for higher complaints levels;
- c. In contrast, our views are informed from serving many millions of customers over many years and from significant ongoing engagement with our customers (in contrast to the extremely limited qualitative

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<sup>3</sup> [X]

<sup>4</sup> See paragraphs 35 – 49 of the judgment at [http://www.catribunal.org.uk/documents/Judgment\\_1094\\_180908.pdf](http://www.catribunal.org.uk/documents/Judgment_1094_180908.pdf)

<sup>5</sup> As Ofcom explains in its MSA: “Overall satisfaction with mobile services has been growing steadily, by one percentage point a year over the last four years.”[ §4.10]

<sup>6</sup> Whilst the published complaints data is informative to a degree, it does not provide the whole picture. Indeed, for the reasons we discuss below, we believe that it is unreasonable to conclude from the data that the [current regime] is failing customers - and that intervention via a new General Condition is now justified.



element of Ofcom's Futuresight research which interviewed three O2 customers<sup>7</sup> in 2006). [X];

- d. Whilst Ofcom recognises the regulatory risk of its proposed intervention on the competitive dynamic, we believe that Ofcom has not struck the right balance in its proposals and as such it will distort the very dynamic it wishes to preserve. In particular, in a maturing market, where margins are under pressure, operators must find innovative ways to differentiate themselves from their competitors. Customer services is one such area. O2 has invested considerably in its customer services<sup>8</sup> – believing that it provides opportunity for differentiation and customer retention. We believe investment is delivering results. Indeed the Ernst and Young Report on Complaints Handling<sup>9</sup> cited by Ofcom underlines the point that there are clear commercial incentives at play in dealing with complaints:

*“Philip Middleton, partner at Ernst & Young, said: “Our research shows that those retailers who are best able to resolve customer complaints quickly, satisfactorily and with minimum fuss are more likely to retain that customer than those who don't. Customers want to speak to knowledgeable staff that are empowered to handle their complaint and take it seriously.”<sup>1011</sup>*

- e. We believe that before Ofcom reaches for “more regulation” it must (as its own principles and Better Regulation naturally require), consider whether it can address issues via the existing General Condition. We note that in Ofcom's previous review of ADR<sup>12</sup> Ofcom commented:

*“It is important that Ofcom has a greater understanding of the way in which complaints are handled in order to assess whether Schemes are effective. For example if complainants are being incorrectly signposted e.g. being sent to the Schemes too early, this puts pressure on a Scheme's resources and may adversely affect its own service levels. If complainants are not being signposted to ADR at all, this may mean that the provider is not*

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<sup>7</sup> And we note that in one of those cases attributed to O2, the text refers to T-Mobile!

<sup>8</sup> Part and parcel of this commitment is ensuring that if our customers are dissatisfied with the way in which we deal with any complaints they might have about our services, then we can deal with such concerns properly and effectively. Our Customer Services systems/ processes/ complaints handling/ reporting and review services are all orientated around our commitment to delivering a great service for our customers.

<sup>9</sup> <http://www.ey.com/global/Content.nsf/UK/FS - Complaints Handling>

<sup>10</sup> [http://www.ey.com/GLOBAL/content.nsf/UK/Media - 07\\_04\\_23\\_DC - Quick complaints resolution key to customer satisfaction](http://www.ey.com/GLOBAL/content.nsf/UK/Media - 07_04_23_DC - Quick complaints resolution key to customer satisfaction)

<sup>11</sup> The Ernst and Young Report also points out in respect of rational complainers: “If their complaint is handled quickly and efficiently, they are more likely to be complimentary about the provider”

<sup>12</sup> “Ofcom Review of Alternative Dispute Resolution Schemes”, Ofcom, July 2005

<http://www.ofcom.org.uk/consult/condocs/adr/adr/adr.pdf>



'maintaining procedures' to conform to the Complaints Code (General Condition 14.2)." [§3.21] (Emphasis Added)

- f. Accordingly, Ofcom must first assess whether compliance action can be taken under the existing General Condition.
- v. *The Implementation Period Ofcom proposes is wholly unrealistic* [X]<sup>13</sup>
6. The following extract from Ofcom's: "Better Policy Making: Ofcom's approach to Impact Assessment", 21 July 2005 is particularly relevant in relation to our concerns:
- "The decisions which Ofcom makes can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate. If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition. These guidelines explain how Impact Assessments will be used to help us apply these principles in a transparent and justifiable way.*
- 'The option of not intervening...should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of...regulation and its unintended consequences, may be worse than the effects of the imperfect market' Better Regulation Task Force (September 2003)" [§1.1]*
7. We would be pleased to meet with Ofcom to discuss this response and the costs for us of Ofcom's proposals. We share Ofcom's view that efficient complaints handling and ADR is important and we believe that with the backdrop of the MSA and more generally, reports regarding the level of complaints concerning mobile hitting the headlines that it is important for Ofcom and the industry to reflect on the right framework for engendering customer trust in our market.
8. However, for our part, we don't think the additional regulation proposed by Ofcom is the answer – indeed we believe that it will be counter productive. Ofcom must be careful not to set stakeholder expectations by suggesting its proposals are a panacea to levels of customer dissatisfaction<sup>14</sup>. Rather, we believe the existing

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<sup>13</sup> [X].

<sup>14</sup> As Ofcom's MSA explains: "It is important to recognise that there may be a number of different factors that could lead to the growing complaint numbers, in addition to changes in the underlying services. For example, rising complaints may reflect increasing consumer awareness or changes to the way cases are recorded." [§4.68].



regime must be considered – in particular enforcement of existing regulation alongside market forces. We discuss this further in our response.

## **OFCOM'S REVIEW**

*We agree that it is important to have appropriate and effective ADR and Complaints Handling Procedures*

9. O2 believes that improving its customers' satisfaction with its service is a means of distinguishing itself from its competitors. An integral part of this approach is dealing effectively and efficiently with customer complaints. In addition, our customers have recourse to the independent ombudsman, Otelo, which provides an independent alternative dispute resolution service. We therefore have a keen interest in Ofcom's policy in this area and we share Ofcom's view that: "*...it is important to have appropriate and effective ADR and Complaints Handling Procedures ...*" (§§ 2.4 - 2.6).

*The current regime is successful in many respects*

10. We also agree with Ofcom that it is important to ensure that any regulatory regime in this area is working efficiently and effectively for customers. In this respect, we note that Ofcom says:

*"We think that our current regulation for ADR and complaint handling procedures is successful in many respects ... [but] ... that there are concerns among some stakeholders about aspects of the current system." (§§ 2.1 -2.2) and "...we have identified potential problems around access to ADR ... [and] [w]e have also found evidence of general levels of dissatisfaction with CPs complaints handling procedures." (§1.4)*

*But if there are concerns with the current regime, these need to be considered*

11. We believe it is important to carefully consider the concerns that have been voiced about the current regime along with the associated evidence to determine what, if any, changes to the current regime are appropriate. Ofcom explains (§2.2) stakeholder concerns are mostly about:
  - i. Access to ADR, and
  - ii. The general standard of complaints handling procedures by CPs.



### *Ofcom's proposals*

12. Ofcom proposes to modify General Condition 14 (Codes of Practice and Dispute Resolution) of the General Conditions of Entitlement to deal with the three main conclusions it reaches in the Consultation:
  - i. *Access to ADR should be improved:* despite the current regulatory regime being successful in many ways, Ofcom concludes that appropriate improvements include reducing the period before consumers have the right to go to ADR from twelve to eight weeks and requiring Communication Providers (CPs) to tell consumers about ADR within 5 days of making a complaint (if the complaint hasn't been resolved);
  - ii. *A single, high level set of Standards for Complaints Handling Processes:* CP's must comply with a single Ofcom Approved Complaints Code of Practice which includes a "high level" set of standards for complaints handling as set by Ofcom;
  - iii. *Mandated Record Keeping:* requiring CPs to keep certain records of all complaints (so that Ofcom can request information to ensure compliance with the relevant regulation).
13. Ofcom concludes that, notwithstanding the significant costs its proposals would impose on CPs, the benefits of such new rules outweigh the costs and its proposed changes are appropriate, proportionate and justified.

### *O2's response*

14. As explained in the Executive Summary, we have some fundamental concerns regarding Ofcom's proposals. In the remainder of this response, we cover Ofcom's definition of Complaint, Ofcom's proposals in respect of ADR and Complaints Handling (including the high level standards for a single Code) and the Legal and Regulatory Framework.

### **OFCOM'S PROPOSED DEFINITION OF "COMPLAINT"**

15. Ofcom rightly explains that: "...we need to make it clear what we are regulating..." (§3.8). We agree that there must be regulatory clarity (if indeed Ofcom needs to regulate in the first instance):





*“...we need a common definition of a complaint to make sure that our regulation properly captures the scenarios in which we think consumers are exposed to harm and detriment. We also need it so that our regulation is applied uniformly by all CPs and consumers are therefore protected in the same way regardless of the CP they chose”. (§3.13)*

16. Ofcom proposes to adopt the definition used in ISO 10002:2004 (Quality Management – Customer Satisfaction – Guidelines for Complaints Handling in Organisations). Whilst we appreciate that the definition may be a definition used under ISO, we believe that Ofcom must carefully consider the justification for such a definition – and the side effects – within a General Condition. For example:

- i. It does not differentiate between customers who are experiencing harm and detriment and those that are not. As such, it goes beyond that which Ofcom is seeking to “regulate” /address and hence is not targeted to the issue at hand. In adopting a broad definition of complaints, Ofcom’s approach is to require operators to spend time and money recording all complaints – regardless of the “value” involved. Given the OFT conclusion in its paper “*Consumer Detriment, Assessing the frequency and impact of consumer problems with goods and services*” OFT 992 April 2008 <sup>15</sup>, this is likely to be an inefficient use of resources:

*“4.5 Unsurprisingly, smaller value problems are much more commonly experienced than problems with higher value detriments. On detailed examination, 55 per cent of problems were found to result in detriment less than or equal to five pounds, while respectively 28 per cent, 14 per cent and four per cent of problems fall within the three higher detriment bands shown below [16].”* And

*“4.6 While the distribution of problems is heavily skewed towards lower values, the total amount of detriment is heavily skewed towards higher value problems. This is an important finding. In terms of activity directed at reducing detriment, there appears to be greater potential for reductions in detriment to be achieved by addressing these higher value problems than in the elimination of small value problems.”*

- ii. Using such a broad definition directly affects the nature and cost of the changes proposed by Ofcom (such as record keeping and handling processes) as well as operational complexity – and as we point out, it would mean incurring costs recording “complaints” which Ofcom does not in any

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<sup>15</sup> Consumer Detriment, Assessing the frequency and impact of consumer problems with goods and services, OFT 992 April 2008. [http://www.ofcom.gov.uk/shared\\_ofcom/reports/consumer\\_protection/oft992.pdf](http://www.ofcom.gov.uk/shared_ofcom/reports/consumer_protection/oft992.pdf)

<sup>16</sup> £5 - £100, £101 -£1000 and £1000+ respectively.



event intend to regulate. This is not targeted regulation and results in significant and unnecessary costs;

iii. Ofcom's definition will capture faults that are rectified at first point of contact or within agreed SLAs. Ofcom's definition would effectively double count faults and complaints. Where customers become dissatisfied is when CPs don't rectify a fault when they say they will/ within the contracted time to resolve.

17. These are not new points. Indeed, the last time Ofcom consulted on the definition of complaints, it proposed a similarly broad definition<sup>17</sup>. However, after consultation Ofcom concluded a broad definition was inappropriate and amended its proposal accordingly (proposing that any common definition would be voluntary). Ofcom's Statement noted:

*"... the mobile operators were concerned that a common definition of a complaint based on 'any expression of dissatisfaction' may be costly to implement and might inadvertently include enquiries, rather than complaints (e.g. reports of a lost or damaged handset)".* [§3.15]<sup>18</sup>

18. We believe that if Ofcom is concerned about the record keeping of any particular operator as a result of its Information Request, then it should first have a conversation with that operator rather than seek to place all providers under a regulatory duty<sup>19</sup> to keep complaints logs. However, at the moment, Ofcom's approach is certainly not the least intrusive open to it – nor indeed is it proportionate. Ofcom's definition of "complaints" is too widely drawn for the purposes of any general condition – and this has considerable impact on the costs arising from Ofcom's proposals.

## **ALTERNATIVE DISPUTE RESOLUTION**

### *Improving access to ADR*

19. Ofcom concludes that despite the current regulatory regime being successful in many ways, it has "*identified potential problems with access to ADR*" [§1.4]. The hypothesis being that there appears to be low level awareness of ADR which potentially means that consumers may not be exercising their right to ADR or would

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<sup>17</sup> <http://www.ofcom.org.uk/consult/condocs/adr/adr/adr.pdf>

<sup>18</sup> <http://www.ofcom.org.uk/consult/condocs/adr/statement/statement.pdf>

<sup>19</sup> We would be happy to discuss our record keeping approach as per our response to the Information Request last year.



be better equipped to complain to their provider if they knew about the ADR scheme:

*“An individual consumer can suffer significant harm and detriment if they are not able to effectively negotiate directly with a CP to resolve a complaint. Given consumers the right to go to an independent body for fair and impartial dispute resolution is an important way in which a consumer may be protected and empowered when having a dispute with a CP.”<sup>20</sup>*  
[§3.2]

20. As Ofcom will appreciate, the issues are identified as “potential” problems – yet Ofcom is proposing intervention which carries a significant cost to CPs. We believe that more robust and certain evidence is required regarding the problems.

*How long should consumers have to wait before being able to go to ADR?*

21. We agree with Ofcom that *“A balance must be struck between giving CPs a reasonable time in which to resolve a complaint and giving consumers the ability to seek redress within a reasonable time”*. [§3.16] We believe this is an important factor to consider.
22. Further, we note that Ofcom identifies that *“...only a very small proportion of complaints are resolved between 8 and 12 weeks...less than one per cent of total complaints ...or as a proportion of the complaints unresolved at eight weeks...less than 10 per cent”*. And that this means that for the majority of complaints that cannot be resolved without going to ADR, there is no appropriate reason for waiting an additional four weeks before they go to ADR<sup>21</sup>.
23. O2 would wish to resolve any complaint or dispute with the customer with the minimum of frustration– and we certainly would not want to see a regime which exacerbated any detriment<sup>22</sup>. Accordingly, notwithstanding the caveats and costs

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<sup>20</sup> Ofcom refers to its Futuresight Report of 2006 which comprised a Quantitative survey and Qualitative interviews (of 50 people of which 15 were mobile customers). It was these latter Qualitative interviews which we understand *“...gathered data on the practical and emotional implications of the complaints experience”* (§ 2.38). Although, as Ofcom explains (§ 2.39) these qualitative interviews were: *“...self selected and cannot be regarded as representative of all those who had cause to complain ..[and indeed] ...had tended to suffer significantly worse experiences in the way their complaints were handled than average.”* Notwithstanding this caveat, there is of course wider research in respect of consumer detriment related to complaints handling.

<sup>21</sup> Indeed, Ofcom observes, for such complaints, consumers may suffer detriment from the additional waiting period, such as stress and financial loss. Ofcom concludes (3.31) that *“Given the evidence (in particular from the Futuresight Report) that dealing with complaints can cause significant detriment to individual customers (for example, stress and financial loss), a shorter period means a better outcome for individual consumers.”*

<sup>22</sup> [§3.1].



discussed below, we can see merit in a move to 8 weeks provided the benefits clearly outweigh the costs (and provided there was evidence that this is likely to lead to quicker “end to end” resolution of cases).

24. We would point out that Ofcom’s assertion that the reduction results in a “better” outcome must be caveated. For example, whilst for some individual customers there may be a better outcome; the real test that Ofcom needs to consider is whether these benefits outweigh the costs of such change. For example, not only the costs to CPs but also the impact on the consumers (<10% of customer complaints) whose complaints would have been resolved in the period but which would now be referred to ADR, thereby extending the period before closure and thus, if Ofcom’s assertion elsewhere holds, prolonging any detriment (were it present) caused by the experience of complaining. Or is Ofcom’s hypothesis that consumer detriment subsides once the case is referred to ADR?
25. Ofcom concludes that the move from 12 to 8 weeks “...will impose additional costs on CPs but we believe that these are not disproportionate when weighed against the improvement in consumers’ ability to exercise their right to ADR.” As above, as far as we are aware, Ofcom has made no quantification of the reduction of detriment that will be achieved. Furthermore, the awareness levels do not necessarily mean that consumers for whom ADR is appropriate are not exercising that right. The judgement Ofcom is making is that any harm/ detriment caused is of sufficient level to justify its decision. But there is no quantification of that harm/ detriment. As such, at this stage, Ofcom does not appear to have justified its intervention in the profound and robust manner which the CAT’s recent judgment on MNP makes clear is required of Ofcom<sup>23</sup>.

*Improving awareness - CPs to tell consumers about ADR within 5 days of making a complaint (if the complaint hasn’t been resolved)*

26. The data Ofcom puts forward about awareness levels of ADR is interesting. However, we do not agree that it necessarily follows that “levels of consumer awareness of ADR are at an unacceptably low level”:
  - i. Ofcom’s Tracker Surveys for 2006 and 2007 identify that prompted awareness of the “right to ADR” is low – at 15% of adults being aware of at least one of the ADR schemes in the market - rising to 22% of those who had made a complaint. No attempt is made to consider whether, in context, this is cause for concern. As we point out earlier, given that the vast majority

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<sup>23</sup> ibid



of customers are satisfied (with levels of customer satisfaction in the 90s<sup>24</sup>), relatively few people have the need to be aware of a dispute resolution process – which, after all, is the backstop if the provider cannot resolve matters – and so why should there be high awareness of a process which they have had no need to use.<sup>25</sup>

- ii. Ofcom then raises concerns that of those who had cause for complaint, during 2005, only 22% were aware of ADR schemes [§3.43] . We are puzzled why Ofcom did not collect data for 2006 and 2007, suggesting that Ofcom did not consider the level of awareness an issue at the time – otherwise it would presumably have acted then, if only to track awareness. However, we understand it chose not to do either.
- iii. Whilst Ofcom flags concern that low awareness of ADR impacts consumer empowerment, the Ernst and Young Report and Ofcom's own MSA, points out that in actual fact there is rising consumer awareness<sup>26</sup> and empowerment - which may actually drive levels of complaints:

*“It is important to recognise that there may be a number of different factors that could lead to the growing complaints numbers, in addition to changes in the underlying services. For example, rising complaints may reflect increasing consumer awareness or changes to the way cases are recorded. This may be the case for the CAB data.” [MSA §4.68] (Emphasis added)*

- iv. Ernst and Young's own conclusion that consumers are increasingly savvy, is an indicator that the picture of unempowered consumers is outdated (hence the market will incentivise providers to cater for this - regulatory intervention is not necessary):

*“Consumers are also increasingly willing to escalate a complaint and grow impatient if rapid resolution is not achieved.”*

- 27. Whilst we agree that poor awareness of ADR is undesirable amongst those for whom ADR is the appropriate next step (having reached deadlock or 12 weeks), explicit notification is not the only way of raising awareness. Indeed as discussed

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<sup>24</sup> As Ofcom explains in its MSA: “Overall satisfaction with mobile services has been growing steadily, by one percentage point a year over the last four years.”[ §4.10]

<sup>25</sup> In the recent report “Customer Satisfaction 2008”, April 2008, by Craigforth on behalf of Otelo it is observed, in respect of low awareness, “...it is still worth noting that the figures may reflect customers’ memory recall and awareness rather than being a true reflection of company practice. Nevertheless, further investigations seem warranted.” [§1.3]

<sup>26</sup> This again is consistent with Ernst and Young’s comments noted elsewhere in this response.



elsewhere, in Ofcom's 2005 consultation, customers most preferred method for communication was website and back of bill. So lack of notification does not necessarily mean "was not aware of ADR". Accordingly, we have concerns that Ofcom is conflating the two. They are not necessarily one and the same. The 22% general awareness level reported for 2005 for those who had made a complaint might indicate that there is correlation, but again there is the issue of at what stage in the complaint lifecycle awareness matters. If, as Ofcom identifies elsewhere that around half of complaints are resolved at the first stage, then there is no reason why half of complainants should necessarily be aware of the dispute option. So there may well be natural bias to the 22% figure.

28. Accordingly, we believe that the Tracker statistics must be treated with caution and that they provide an insufficiently complete or robust analysis upon which to base the significant cost and intervention Ofcom proposes.

*The right approach to informing customers of ADR*

29. We believe that customers should be provided with information about ADR and we note Ofcom's view that its proposals will protect "...consumers and citizens from the potential harm which they may suffer if they are not aware of their right to go to ADR at the appropriate time" [§3.96 (a)]. However, we do not consider that it is appropriate to send customers a written notice about the ADR process within 5 days of making a complaint (if it is not resolved) – indeed, we believe that it is likely to be counterproductive in a number of ways:
- i. It may create the expectation/ perception that ADR replaces our own internal escalation/ resolution process<sup>27</sup>. This can clearly give rise to confusion. It is important to recognise that ADR is an independent "dispute" resolution process. Given the escalation routes available to resolve complaints, to suggest that within 5 days of receipt the complaint is a "dispute" is misleading and will create unhelpful perceptions for customers (notifying details of ADR at the outset will risk confusing matters and create customer frustration "*I want to go to ADR now – why won't you let me!/ If I can't go now, why have you sent me all these details*") and Customer Services staff;
  - ii. Premature approach to ADR. Ofcom's Statement<sup>28</sup> in 2005 was that "*Front line staff should be trained adequately in company complaints procedures and should not direct enquiries to Ofcom or the ADR prematurely.*" However, Ofcom now appears to be concerned that consumers should be notified within 5 days if the complaint is not resolved. Given the escalation processes inbuilt

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<sup>27</sup> [X].

<sup>28</sup> <http://www.ofcom.org.uk/consult/condocs/adr/statement/statement.pdf>



within O2's Complaints Handling approach, Ofcom notes that this sort of early inappropriate referral was already prevalent;

- iii. Ofcom's proposal for written notice is dependent on us having names and addresses/ email addresses. As Ofcom is aware, we do not necessarily have this information where the customer is an unregistered pre-pay customer. So the complainant would need to provide us with this information if we did not already have it. In any event, we see no reason why flexibility of communication shouldn't be allowed, for example, why a text message or a link to web pages or such could not equally be a valid response (if, contrary to our views, Ofcom continues to consider that the 5 day milestone is important).

30. Ofcom also propose that providers should be required to notify complainants about ADR at week 8. [X].

*Ofcom's own evidence concludes that consumers prefer to be notified about ADR by either web or back of bill communications – not letter*

31. Ofcom's proposals also seem to ignore consumers own preferences for obtaining information on complaints handling processes as per Ofcom's Statement "Alternative Dispute Resolution Recommendations for best practice", 13 December 2005<sup>29</sup> :

*"Although the Ofcom guidelines do not specify how codes should be made available, we make it very clear that customers must be made aware of their existence and that it is up to the providers to find appropriate ways of doing this. Independent research undertaken for the Review found a wide range of consumer preferences for obtaining information on complaints handling processes, with the main preference either the Web/Internet (54%) or the provider's bill (26%)."* [§3.10]

32. Table 2 of the research provides the following (preference for information by web/ internet and bill was far greater than for letter):

- Web/Internet 54%
- Bill 26%
- Advertising e.g. TV/radio/newspapers 16%
- Telephone book/Yellow pages 14%
- A Phone number 10%
- A letter/information from supplier 8% (note, cited as 7% in the Annex 7)
- Citizens Advice Bureau 4%
- Library 5%
- Directory Enquiries 2%
- Other 21%

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<sup>29</sup> <http://www.ofcom.org.uk/consult/condocs/adr/statement/statement.pdf>



- Don't know 3%.

*What should be in the notice about ADR?*

33. As above, we don't believe an ADR notice should be sent within 5 days. If Ofcom proceeds with its proposal, then we would want to discuss the content of any such notice with Ofcom.

*What level of awareness about ADR is appropriate?*

34. O2 is very happy to discuss with Ofcom ways in which customer awareness can be addressed under option 4 (general signposting) – but, from our experience of communicating with customers, we do not believe the one size fits all process (i.e. an automatic letter) which Ofcom proposes is the right way. In relation to Ofcom's proposals, we find that Ofcom has provided no evidence that customers are currently unable to exercise their right of ADR, nor has Ofcom explained how the notice within 5 days will reduce customer "*exposure to suffering detriment, including stress, anxiety and financial loss*" [§3.96 (b)] compared to the existing regime. Indeed, in any event, as Ofcom notes, one of the risks of serving notice at this early stage is that customers will simply discard and forget the notice.
35. Ofcom claims that its proposal is the least onerous solution to achieving Ofcom's objective of making sure that consumers are aware of their right to ADR. Further Ofcoms explain that: "*We consider that the costs which it is likely that CPs will incur are proportionate to the benefit that consumers and citizens will receive as that are small on an industry wide basis compared to the significant benefit which individual consumers are likely to derive*" [§3.96 (b)]. However, earlier Ofcom refers to these industry costs as "significant":

*"The most important disadvantage of this option is the costs, which we recognise may be significant. In addition, there might be increased indirect costs, as a result of additional ADR cases and increased expenditure on complaint handling procedures by CPs."* [§3.87]

36. So Ofcom has already recognised that CP costs are likely to be significant. However, it then appears to conclude that these already significant costs are going to be outweighed by the unquantified "*significant benefits which individual consumers are likely to derive*".
37. In respect of consumer empowerment, Ofcom observes that:





*“[ADR] is an important way to redress the power imbalance between consumers and CPs who normally have greater resources, knowledge and control over products and services which are in dispute” [§2.5)].*

38. Whilst, we do not dispute ADR may be a part of redressing this balance, clearly the customer’s ability to take their custom elsewhere is a fundamental power for the consumer. In addition, the conclusions in the Ernst & Young Report<sup>30</sup> cited by Ofcom also paint a picture of increasing consumer empowerment – one in which the “power imbalance” to which Ofcom refers is increasingly shrinking:

*“Consumers today are more informed, increasingly knowledgeable and have higher expectations about customer service. This is both in terms of how they should be treated and what they can do if their expectations are not met. As a result, expectations are rising and look to continue to do so. There are various reasons for this evolution in attitudes and behaviour...  
... a ‘culture of complaining’ has developed, in which consumers have greater awareness of their rights. Media exposure, word of mouth and websites are actively advising consumers of their rights and what they can do when things go wrong or expectations are not met;”*

39. Ofcom’s assessment begs the question: what level of awareness does Ofcom consider is “acceptable” – and why? The Better Regulation Taskforce comments in 2003 are particularly relevant here:

*“The option of not intervening...should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of...regulation and its unintended consequences, may be worse than the effects of the imperfect market” Better Regulation Task Force (September 2003)”*

40. Accordingly, we are unconvinced that the current requirement<sup>31</sup> needs to be amended and we support the General Signposting option (option 4) considered in the Consultation.

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<sup>30</sup> <http://www.ey.com/global/Content.nsf/UK/FS - Complaints Handling>

<sup>31</sup> That “... communications providers should ensure complainants are correctly signposted to the Schemes and make sure that their Complaints Code is easily accessible.”



## **COMMUNICATIONS PROVIDERS' COMPLAINTS HANDLING PROCEDURES**

*Why are good complaints handling procedures important?*

41. We agree with Ofcom that effective complaints handling procedures are an important aspect of ensuring that individual citizens and consumers are appropriately protected and empowered [§4.1].
42. We also welcome Ofcom's recognition of the "...*detrimental impact that regulation may have on efficient, effective and innovative customer service – which benefits all consumers.*" [§4.2] and that "...*customer service and customer relationship management is an important way in which CPs can distinguish themselves.*"

*Are consumers happy with current complaints handling standards?*

43. The Executive Summary of the Futuresight Report explains that:

*"The vast majority of consumers were satisfied with their telecoms services (86%), but when they had reason to be dissatisfied, and made a complaint, the majority were unsatisfied with the way their complaint was handled." The report goes on to observe: "Mobile operators appeared to do marginally better than their counterpart – 52% of consumers were unsatisfied with how mobile operators handled their complaint, compared with 65% who were unsatisfied with their internet provider's complaint handling and 70% who were unsatisfied with their fixed line provider's handling."*

44. We would disagree with the comparison that mobile providers only do "marginally" better than their counterparts. We believe the above show that mobile was significantly better than fixed. The report also comments that mobile operators appeared to resolve the most complaints, 11 out of 15, in an average time of two months (but most commonly taking 1 week). Also, mobile operators had the least number of drop outs – just 1 after a period of 6 months. The quantitative results presented a more positive picture than the qualitative findings in terms of levels of satisfaction with complaint handling – again showing mobile scored highest in the satisfaction stakes.
45. We understand that the Futuresight research was conducted in summer 2005 and that it has not been repeated. As such, at best it provides an historical snapshot, some 3 years old. We understand the Quantitative sample was 2,167 consumers of which we presume a third were mobile. The Qualitative element consisted of 50 interviews of which we understand 15 were mobile customers. The Futuresight report acknowledges that the Quantitative sample was small. Given the age and



sample sizes involved, we do not consider that the research is sufficient evidence upon which to base the significant intervention Ofcom proposes.

46. It is also noticeable that of the reasons for complaint, a significant proportion were complaints in which a resolution might not be simple, for example, 25% were around poor reception/ coverage and 9% were an expression that the contract is “unfair”. For complaints of this type, there may not be a clear “resolution” for the customer. In these circumstances, this is likely to colour satisfaction with the complaints handling process itself.

*What’s the problem Ofcom is trying to fix?*

47. Ofcom identifies three options for the regulation that it could set for “addressing” the problems with complaints handling procedures identified. However, the main body of Consultation does not explicitly identify the causes of customer dissatisfaction with complaints handling. For this we have to look into the Futuresight Report which identifies a number of suggestions [§5.13] (See Annex 2). We note that reference to improving access to ADR does not feature in customers’ recommendations and, furthermore, those aspects which customers want to see improved are generally matters for competition - not areas for micro-regulation of the type Ofcom proposes. If this level of service is something which customers want, then operators who wish to deliver that experience will respond and customers will make their choices. We discuss this further in the final section of this response.

*The need for a single approved Code of Practice setting out high level mandatory standards*

48. We believe that operators should be in charge of their own destiny when determining the quality of their complaints handling processes. Accordingly, we see no need for further regulatory intervention. As we explained in our response to the Information Request and, as Ofcom rightly recognises in the Consultation, intervention is of itself a distortion of the market – since it is intervening to set basic quality of service levels<sup>32</sup>.
49. As the OFT paper “Interactions between competition policy and consumer policy”, (April 2008)<sup>33</sup> observes:

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<sup>32</sup> “The main disadvantage of detailed mandatory standards is that it does not leave CPs scope to tailor procedures to reflect their particular business models and customer service philosophies. We may prescribe specific details of complaints handling procedures which inappropriately interfere with a CP’s customer relationship management strategies to the detriment of consumers. We are concerned that individual consumers are appropriately protected and empowered but we think it is important to allow CP[s] to determine the specific details and procedures which best fit within their business models to fulfil those standards.” [§4.43]

<sup>33</sup> [http://www.ofg.gov.uk/shared\\_ofg/economic\\_research/ofg991.pdf](http://www.ofg.gov.uk/shared_ofg/economic_research/ofg991.pdf)



*“A frequent way in which consumer policies can restrict choice is by imposing stringent minimum quality standards on a market. Of course, if quality is not observed by consumers, if reputational concerns are not effective, and if information remedies are not feasible, then it may be sensible to impose minimum standards. But the situation is rarely that bad” [§5.7].*

50. Even if there were a case for intervention, then one of the least intrusive interventions in relation to a General Condition may indeed be to set a Code based on high level principles rather than prescriptive standards – i.e. Ofcom’s preferred option. We have read Ofcom’s draft General Condition with interest. However, some aspects are extremely intrusive – including retail price regulation of contact numbers for complaints handling centres.
51. Ofcom bases its proposal on its conclusion that call costs “*may deter consumers from making justified complaints*” [4.57] and Ofcom’s own view that “*it is not appropriate for CPs to be able to generate profit ... through phone numbers used for complaints – and thereby benefit from their own customer errors*”. However, charges did not appear to feature in the list of customer recommendations made in the Futuresight report and Ofcom provides no evidence that there is any significant deterrent effect.
52. Further, in concluding that “*it is not appropriate*” Ofcom appears to have made no assessment of the legitimate justification for charging, nor as to the effect of any such intervention on the business models for complaints handling. Furthermore, if Ofcom is of the view that such charging is “inappropriate” for communications, what about other sectors – be it in broadcasting, ICT, media or indeed any other public or private sector body? Why should communications be singled out?
53. We comment on the high level detail of Ofcom’s proposed Code in Annex 3.

## **RECORDING COMPLAINTS**

### *Ofcom’s rationale for mandating record keeping*

54. Ofcom explains that the proposed record keeping requirements will allow Ofcom to make sure that CPs are complying with the proposed regulatory obligations: to measure the point at which the 8 weeks reference to ADR occurs; or that the complaint has been dealt with “promptly”.
55. Ofcom explains that the responses to its 2007 Information Request indicate that CPs do not keep “adequate” records of complaints. Ofcom proposes that CPs



should keep a log for each complaint when first received and throughout its handling detailing the name and address of the complainant, the date the complaint was first received, a description of the complaint and a description of how the CP deals with the complaint.

*Ofcom's proposal would incur significant costs – yet there is no evidence that our current record keeping gives rise to any enforcement issues*

56. [X].
57. [X] We have operated our Otelos scheme for a number of years and Ofcom has not expressed any concerns about its adequacy or, in relation to resolving complaints, concern that we have insufficient records to demonstrate compliance with the current regime. If no issues have need experienced to date after some years, we see no reason why they should become a problem going forward.

## **THE LEGAL AND REGULATORY FRAMEWORK AND BETTER REGULATION PRINCIPLES**

### *The Communications Act*

58. In the Consultation, Ofcom discusses the legal and regulatory framework in relation to Complaints Handling Procedures (see §§ 2.19 – 2.28). In particular, Ofcom refers to its duties under section 52 of the Act. We appreciate that Ofcom has sought to paraphrase its duties in the Consultation, but it is important to be clear what section 52 requires. For example, a cursory reading of §2.26 of the Consultation might be misinterpreted as maintaining that Ofcom must set General Conditions in this area. This is not the case. A General Condition solution is not necessarily the only solution.
59. Section 52 explains that it shall be a duty of Ofcom to set such General Conditions *(if any)* as they consider appropriate for securing that [CPs] “...*establish and maintain procedures, standards and policies with respect to the handling of complaints made to CPs and the resolution of disputes*”. As §145 of the Explanatory Notes<sup>34</sup> to the Communications Act makes clear:

*“Sections 52 to 55 place OFCOM under a duty to ensure that the communications industry has in place effective and accessible machinery for the protection of domestic and small business customers, including procedures for dealing with complaints and disputes. They allow OFCOM to*

<sup>34</sup> <http://www.opsi.gov.uk/acts/acts2003/en/03en21-c.htm>



*take action if the industry does not voluntarily develop an effective regime for this purpose. Taken together these sections implement Article 34 of the Universal Service Directive and form part of the implementation of condition 8 of Part A of the Annex to the Authorisation Directive.” [Emphasis added].*

60. Ofcom’s Impact Assessment has considered the “do nothing” approach (which is in fact to rely on the existing General Condition). However, it has not – as section 52 requires, considered whether the market will respond - and hence whether the “do nothing” approach is the appropriate and light touch approach.

*Are there incentives in the market to respond to the issues?*

61. We believe that there is clear evidence that there are market incentives to respond to the issues raised. Indeed Ofcom’s MSA itself concludes that this area is primarily one for industry:

*“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 customer experience and address the underlying causes of this trend.”*  
(Emphasis added) [§8.21].

62. At §8.28 of the MSA Ofcom notes that over the medium to long term more robust consumer regulation may be necessary if, for example, “...*consumer anxieties and complaints were to increase, and providers were to fail to respond to the challenge of improving customer experience ...*”. Again, here Ofcom suggests that regulatory intervention should only be considered if the market fails to respond to the issues identified.

63. Not only has O2 made clear that investment in customer services is fundamental to its strategy, both Vodafone and Orange have made similar subsequent announcements<sup>35</sup>. As Ofcom (and others) recognise, there is a sound business case for improving customer experience and customer satisfaction – and providers ignore this at their peril since customers and the market mechanism will not hesitate to punish them:

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<sup>35</sup> <http://pressoffice.orange.co.uk/Content/Detail.asp?ReleaseID=794&NewsAreaID=2>  
[http://www.vodafone.com/start/media\\_relations/news/local\\_press\\_releases/uk\\_press\\_releases/2007/vodafone\\_uk\\_announces.html](http://www.vodafone.com/start/media_relations/news/local_press_releases/uk_press_releases/2007/vodafone_uk_announces.html)



- i. The Executive Summary of the Futuresight Report points out that customers who had a poor experience do not hesitate to switch : *“In almost all of these cases, the way in which the complaint was handled that [sic] was the reason for switching, rather than the initial problem itself.”* Add to this the tendency for consumers to tell their circle of contacts about poor performance and the influence peer experience has in the buying process and it is clear that consumers are empowered to punish providers for poor service;
- ii. In its Consumer Experience Research, published in November 2006, Ofcom notes at section 8 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...”*

64. As the Consultation recognises at §2.22, integral to Ofcom’s duty of furthering the interest of consumers is that such duty should be exercised where appropriate by *“promoting competition.”*

*Not only are there market incentives present – but regulatory intervention will distort the market*

65. Accordingly, we believe that it is common ground that there are clear market incentives for providers to deliver effective and efficient claims handling services and appropriate dispute resolution schemes. Furthermore, given these incentives, we are concerned that regulatory intervention distorts the competitive dynamic by driving those that may be below par (whether by choice or not) to up their game to the minimum standards required by Ofcom. Whilst Ofcom’s Consultation recognises the regulatory risk of its proposed intervention on the competitive



dynamic, we believe that Ofcom has not struck the right balance in its proposals and as such it will distort the very dynamic it wishes to preserve.

### *Better Regulation Principles*

66. Ofcom's own Better Policy Making Guidelines explain:

*"The decisions which Ofcom makes can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate. If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition. These guidelines explain how Impact Assessments will be used to help us apply these principles in a transparent and justifiable way.*

*'The option of not intervening...should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of...regulation and its unintended consequences, may be worse than the effects of the imperfect market' Better Regulation Task Force (September 2003)" [§1.1]<sup>36</sup>*

67. Whilst ensuring that the current regulatory regime is fit for purpose and appropriate is something that we support, Ofcom appears to have missed a central part of the analysis required not only by the Better Regulation principles but Ofcom's own commitment to a bias against intervention, i.e. is intervention necessary. Is there a failure which will not be corrected by market forces and hence requires some form of intervention and, if the conclusion is that some intervention is needed, then what form might that intervention be - a formal regulated solution or are there other things short of this which could achieve the desired affect?

68. It is our view that even if Ofcom concludes that the existing regime is insufficient, then before it considers further regulation, it must allow the market to respond to the issues that have been presented in the Consultation.

### *The existing General Condition 14*

69. Ofcom concludes that reliance on the existing General Condition does not provide adequate protection for consumers – and so a new General Condition is required. However, in relation to awareness of ADR contradicts Ofcom's Statement in 2005<sup>37</sup>:

<sup>36</sup> [http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)

<sup>37</sup> *ibid*





*“If complainants are not being signposted to ADR at all, this may mean that the provider is not ‘maintaining procedures’ to conform to the Complaints Code (General Condition 14.2)”*

70. Accordingly we see no reason why Ofcom cannot rely on the current regulation.

### **CONCLUDING COMMENTS**

71. We share Ofcom’s view that efficient complaints handling and ADR is important. We believe that with the backdrop of the MSA and more generally, reports<sup>38</sup> regarding the level of complaints concerning mobile hitting the headlines that it is important for Ofcom and the industry to reflect on the right framework for engendering customer trust in our market.

72. However, as we explain in the Executive Summary of this response, we have fundamental reservations about Ofcom’s proposals:

- i. We don’t think some of the proposals will improve things for our customers - [X];
- ii. [X];
- iii. Ofcom’s definition of “complaints” is too widely drawn for the purposes of any general condition – and this has considerable impact on the costs arising from Ofcom’s proposals;
- iv. We find the impact assessment undertaken by Ofcom is unsatisfactory and we remain to be convinced that Ofcom’s proposals to amend General Condition 14 are a justified and proportionate intervention when assessed under the general principles of “better regulation” and Ofcom’s own commitment to only regulating where necessary; and
- v. The Implementation Period Ofcom proposes is wholly unrealistic given the significance of the changes proposed.

73. We would be happy to discuss our response in greater detail with Ofcom. In summary:

- i. On balance, we don’t object to moving from 12 weeks to 8 weeks for ADR provided the benefits clearly outweigh the costs;

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<sup>38</sup> For example, in respect of Consumer Direct  
[http://www.mobiletoday.co.uk/Mobile\\_phone\\_contract\\_complaints\\_drop\\_62\\_percent.html?fragment=&SearchType=&terms](http://www.mobiletoday.co.uk/Mobile_phone_contract_complaints_drop_62_percent.html?fragment=&SearchType=&terms)



- ii. We believe signposting should remain a requirement rather than introduce requirements to notify within 5 days and at week 8;
- iii. We believe that anything beyond some very basic standards embedded in any Ofcom Approved Code is unjustified intervention – and we recommend some changes to Ofcom’s existing draft;
- iv. Ofcom should withdraw its record keeping proposals and seek to agree a less interventionist approach with industry – in particular, with those providers whose records it believes are insufficient;
- v. Before considering new regulation, Ofcom should first look to using the existing regime - an approach entirely consistent with the principles of Better Regulation Ofcom's own regulatory principles.

**Telefónica O2 UK Limited**  
**October 2008**



## ANNEX 1

### **QUESTIONS RAISED IN THE CONSULTATION**

***Question 1: Do you agree with the following definition of Complaint: “Complaint means an expression of dissatisfaction made to a Communications Provider related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.”***

No. See main body of our response.

***Question 2: Do you agree that a consumer should have the right to go to ADR: (a) eight weeks after a complaint is first received by a CP; OR (b) earlier, if a CP has issued a deadlock letter.***

On balance, if the benefits outweigh the costs, yes.

***Question 3: Do you agree with our preferred Option 4 that a CP should be required to give written notice about ADR:  
(a) Within five working days after the Communications Provider received the Complaint, unless the complaint has been resolved at the first point of contact;(If a consumer contacts a CP again about a matter which the CP reasonably believed to be resolved at first contact then notice should be given at that time) AND  
(b) eight weeks after the CP first receives the complaint, earlier if the complaint is resolved or when the CP issues a Deadlock Notice.***

No. See main body of our response.

***Question 4: Do you agree that the notice about ADR which CP should give must be: (a) be in writing in a durable form be in plain English, clearly written and concise; (b) include a reference for the complaint; include details of the ADR Scheme which the CP is a member of, including contact details; (c) and summarise when the consumer has the right to go to ADR Scheme and the role of the ADR Scheme.***

As above, we don't believe a notice should be sent within 5 days. If Ofcom nevertheless proceeds – then we would want to discuss the content of any such notice with Ofcom.

***Question 5: Do you have any comments on the criteria which we propose we will use in our future review approval of the ADR Schemes?***

Not at this stage.



**Question 6: Do you agree that CPs' should be required to comply with a single Ofcom Approved Complaints Code of Practice which sets out high level mandatory standards for complaints handling?**

No. See main body of our response.

**Question 7: Do you agree that CPs should be required to keep a log of all complaints? We could require CPs to log complaints when they are first received and as they are handled. These records must include as a minimum for each Complaint a log setting out:**

- (a) details of the Complainant, including their name and address;**
- (b) the date on which the Complaint is first received;**
- (c) a description of the Complaint; (d) and a description of how the CP deals with the Complaint.**

No. See main body of our response.

**Question 8: Do you agree that three months from publication of the Statement for this Review is a reasonable period to implement the changes proposed in this Consultation Document?**

No. See main body of our response.



## ANNEX 2

### **FUTURESIGHT REPORT – CUSTOMER RECOMMENDATIONS**

*“Complainants were very consistent in terms of their recommendations for handling complaints. Essentially, they proposed what they considered to be an appropriate level of service and which was the reverse of the situation they typically associated with call centres. Recommendations included:*

- Responding to queries promptly*
- Demonstrating an understanding of the problem by offering more than a basic response*
- Apologising where appropriate rather than implying that the customer was somehow at fault*
- Assuring the customer that they were doing everything they could*
- Giving honest answers as opposed to fobbing customers off with excuses*
- Communicating progress*
- Taking the initiative*
- Offering appropriate compensation rather than an amount that does not in any way reflect the costs incurred or the inconvenience caused – Complying with agreed times and dates*
- Making follow-up calls after the problem is resolved, to demonstrate an appropriate level of customer care”*

*“It’s amazing really that we have to put up with such bad service – I suppose it’s the downside of so little competition in the market” (Christina, 52, housewife)*



### ANNEX 3

#### COMMENTS ON HIGH LEVEL PRINCIPLES OF CODE

CONDITION	O2 COMMENT
<p>1. A Communications Provider must have and comply with fair and reasonable procedures for handling Complaints.</p>	
<p>2. The requirement set out in paragraph (1) above includes, but is not limited to, a requirement that the procedures for handling Complaints are:</p> <p><del>(b)</del> <u>(a)</u> <b>Transparent</b>, in that:</p> <p>(i) information on the Complaints handling process must be well publicised and readily available, including by:</p> <p>a. placing such information in the relevant terms and conditions for a product and/or a service; and</p> <p>b. setting out such information on the Communications Provider's website in a reasonably prominent manner that is easily accessible.</p> <p>(ii) The information which must be disclosed in accordance with paragraph 2(a) <u>(i)</u> <u>(b)</u> above must be kept up to date and as a minimum include information about:</p> <p>a. the process for making a Complaint;</p> <p>b. the timeframes in which the Communications Providers will work to resolve the Complaint, including when the Communications Provider will notify the Complainant about the progress or resolution of a Complaint; and</p> <p>c. the Complainant's right to go to a Dispute Resolution Scheme and the contact details of the Dispute Resolution Scheme of which</p>	<p>2 (b) (i) (a) The amount of information that can – and is appropriate to provide – is likely to be limited in terms and conditions. We suggest that this requirement should simply be in relation to a basic signposting that there is a Complaints Handling Process. It will impractical and inflexible to build the information at (ii) into terms and conditions.</p>

<p>the Communications Provider is a member.</p>	
<p><b>(b) Accessible</b>, in that:</p> <p>(i) a Communications Provider must provide a way to make a Complaint that is easy to use for a consumer of the relevant product and/or service;</p> <p><del>(ii) a Complainant must be able to make a Complaint free of charge, except that where a Complaint is made by a phone call to the Communications Provider, the Communications Provider may charge the equivalent of a geographic call rate;</del></p> <p>(iii) Complaints handling procedures must be easily accessible for disabled or vulnerable Complainants and where necessary dedicated procedures must be provided; and</p> <p>(iv) All information about Complaints handling procedures and about individual Complaints must be easy to understand, concise and correct.</p>	<p>Ofcom has not provided any evidence that cost is causing consumer detriment. Further, in relation to postal and email complaints – clearly cost of postage/ holding an email account must be allowed. As regards the proposed cap on call charges to contact centres, this is significant and intrusive retail regulation. The mobile market is found by Ofcom to be effectively competitive and no operator possesses SMP. Ofcom is proposing an unjustified and disproportionate intervention in an effectively competitive market. Furthermore, for calls from landlines to our contact centres, we do not set retail charges. In addition, this implies separate complaints lines – for example, if access to enquiries was charged above geographic rates, then a separate contact would need to be provided. This complicates the customer experience.</p>
<p><b>(c) Responsive</b>, in that:</p> <p>(i) there must be clearly established timeframes and <u>a reasonable</u> escalation processes for dealing with Complaints, <del>with a maximum of four escalation points;</del></p> <p>(ii) Communications Provider must give <del>written</del> acknowledgement <del>in a durable form</del> of receipt of the Complaint within 5 working days of receiving the Complaint, unless the Complaint is resolved when the Communications Provider first receives the Complaint; and</p> <p>(iii) The Communications Provider must deal</p>	<p>(c) (i) The maximum escalation points can be unnecessarily inflexible, [<del>X</del>]</p> <p>(c) (ii) [<del>X</del>].</p> <p>See earlier comments.</p>



with the Complaint promptly.	
<b>(d) Effective,</b> in that a Communications Provider must have and comply with procedures to monitor and review the implementation of its Complaints Handling Procedures.	





ANNEX 4

EXTRACT FROM O2 RESPONSE TO INFORMATION REQUEST

[X]