



Response to Ofcom's Review of Alternative Dispute Resolution and Complaints Handling Procedures

on behalf of Orange Personal Communications Services Ltd

6 October 2008

[Non confidential version]



Summary

Customer service is at the heart of Orange's business strategy. Our CEO has recently announced a renewed focus on the customer with commitments announced to further invest in customer services and support. This is because we understand that customer loyalty requires the fulfilment of a promise to deliver excellent customer service. With happier customers, we can expect more commercial success.

What is driving this strategic direction is an extremely competitive communications market. Those communications providers with poor customer service and sub par complaints handling procedures will lose customers to their competitors. Failure to meet expected service standards imposes a heavy price in terms of customers and revenues, and also increases costs. In order to have loyal customers who will recommend us, we therefore need to be heads and shoulders above our competitors in terms of the quality of service we provide (including the responsiveness with which we deal with customer complaints), as well as the range of products and services offered. So, it is in the interests of customers and Orange to ensure as many contacts as possible can be dealt with at first point of contact. "Single Call Resolution" is both best for the customer and most efficient for Orange. We are therefore investing resource and expertise in this important area. In short, we are doing all these things because it is our primary objective to be the UK's best loved communications brand – competition is driving this change, not regulation.

Ofcom's proposals risk impacting our ability to deliver on our customer promise, because they interfere with the way we manage our customer relations and constrain how, what and why we communicate with our customers. For example, Orange is seeking to deliver a more personal service by investing in in-store customer service functions. Ofcom's proposals, which focus on call centre activities, risk affecting our ability to do this as staff will be prevented from dedicating their efforts to meeting customer needs because of the requirement to comply with regulatory process.

Of course, we understand – and fully support – Ofcom's intention to ensure that all individual consumers have a basic level of protection and that they are empowered to exercise their rights. However, in order not to constrain innovation, Ofcom must refrain from adopting a prescriptive approach (particularly where the costs and benefits have not been fully assessed). Customer service is a key differentiator; there must therefore be room for individuality. However, Ofcom's proposals require the implementation of uniform procedures which we believe will homogenise customer communications without demonstrably improving customer service. Ofcom should only even consider intervening in the intricacies of customer service and relationship management where competition is failing to deliver – and Ofcom has not identified a failure in competitive forces in this consultation document.

Indeed, Ofcom's commissioned analysis shows that competition is working well: customer satisfaction is high (86% Futuresight report; 94% Mobile Sector Assessment). Those customers that are disappointed with their service are freely switching (4.20). Consumer detriment is therefore minimised and those companies that offer poor customer service are



suffering commercially. In view of these competitive pressures and our desire to be the best loved communications brand, Orange is focusing squarely on ensuring brilliant customer service (in the absence of regulation).

We cannot stress enough the importance for Ofcom to take stock of the operational impact of their proposals. Ofcom's approach to consumer policy is too theoretical and out of step with the reality of front line customer communications. Ofcom tends to require the provision of information without considering how this information will be received and how it will help the consumer make choices and have an impact on behavioural outcomes. Communications providers – not regulators – know best how to deliver key messages to consumers. Ofcom's interventions in customer service in a competitive market must remain principles based so that market experts can design their customer services in a way that best meets their brand values and commercial needs. Companies should have the freedom to train front-line employees, and establish processes for those employees to follow, which deliver the best possible customer experience.

The need to conduct a robust cost benefit analysis

Whilst Orange is confident in the benefits of our customer-centric agenda, Ofcom has not demonstrated that their restrictive proposals will deliver real consumer benefits – and ones which are proportionate to the costs. Indeed, we have very serious concerns that Ofcom has not fully considered the impact of their proposal on competition and customer service and that in the absence of a proper cost benefit analysis, Ofcom risks adversely affecting those people whom they purport to be serving – and simply because it makes it might make it easier for Ofcom to monitor regulatory compliance. Before Ofcom proceeds with these proposals, it must conduct a thorough Cost Benefit Analysis (CBA). It is imperative that this CBA is robust and that it will stand up to profound and rigorous scrutiny¹.

Ofcom reiterates the importance of weighing up the pros and cons of regulation throughout the document (e.g. in 2.32), but stops short of carrying out a detailed cost benefit analysis. Just stating the importance of a full cost benefit analysis is far from sufficient in terms of rigorous scrutiny. Ofcom needs to understand the changes that may need to be made to customer service systems and processes and the cost and impact this will have on service delivery and competition. Crucially, Ofcom has not fully explained how the proposals would merit these changes.

We note that Ofcom's impact assessments are near identical for each proposal in this consultation, with no attempt to make a reasonable effort to quantify or qualify the costs and benefits. This is disappointing, particularly bearing in mind a year had almost passed since Ofcom issued their information request. Indeed, we are concerned that Ofcom had already made up its mind that regulation was needed before the August 2007 information request was issued, as their position was in effect set out informally in the optional questions.

¹ The importance of conducting a thorough cost benefit analysis was recently reiterated in the CAT appeal judgement in relation to direct routing and a near-instant, recipient-led process for number portability
http://www.catribunal.org.uk/documents/Judgment_1094_180908.pdf



Ofcom's proposals for raising the awareness of, and access to, ADR

The main aim of Ofcom's proposals is to ensure consumers have information about and access to ADR at the right time. This is a principle we support. Moreover we share the view that 8 weeks should be sufficient to deal with the majority of complaints and that the current timeframes for ADR referral can therefore be reduced.

However, ADR should not be regarded (or depicted) as an outsourced complaints handling function; Ofcom's proposals risk doing this. ADR is not designed as a means to skip through the complaints handling process and to "get compensation". ADR is a measure of last resort – neither companies, consumers, nor Ofcom, should want issues to have to be escalated to ADR by default. Ofcom's proposals risk pushing customers to this stage in the process precipitately and inappropriately. For instance, a customer may seek to jump prematurely to the dispute phase under the misconception that this will accelerate a resolution to their complaint. This will needlessly create a confrontational situation and would be counterproductive (BERR's anecdotal evidence from the Consumer Law Review, which shows that consumers assume they have more rights than they do, could be seen to illustrate this concern²).

As we have stressed in other discussions with Ofcom, information overload is as much a problem as a lack of information. The Better Regulation Executive and NCC research³ clearly highlights that whilst information as a policy solution is not in doubt, it is not failsafe or costless. In case studies many pieces of information were not having the intended impact on behaviour as consumers rejected them because there was too much of it and it was presented in a complex and unappealing format. The focus should therefore be on improving signposting to information at the relevant stage in the process to avoid consumer frustration and confusion. Communications Providers have the in-house expertise and experience to ensure that important information is received at the right time. We therefore strongly believe that Ofcom should implement a high-level requirement which obliges us to ensure adequate signposting to ADR, but which does not prescribe the means by which this has to be achieved.

Ofcom's proposals for improving complaints handling procedures

We agree wholeheartedly that it is vital for CPs to have effective complaints handling procedures. However, in a competitive market, determining *how* complaints are resolved from a procedural perspective must be the role of the communications provider, not Ofcom. Ofcom's duty is to "*further the interest of citizens in relation to communications matters and consumers in relevant markets, where appropriate by promoting competition*". In this case, Ofcom has not expressed why it needs to intervene in our complaints handling procedures, rather than allow market forces to continue to respond to customer demand.

We are not opposed to the introduction of a single Ofcom approved Code of Practice for complaints handling, so long as this is principles based and focused on the consumer

² <http://www.berr.gov.uk/files/file45196.pdf> 3.8

³ BRE and NCC Report – 'Too much information', November 2007

http://www.ncc.org.uk/nccpdf/poldocs/NCC168pd_warning_too_much_information.pdf



experience. However, we are concerned Ofcom is looking at a single Code of Practice for purely administrative reasons, rather than because they genuinely believe this will deliver a better outcome for consumers. Moreover, Ofcom's current "high-level" proposals are far too prescriptive and process driven. Some of Ofcom's proposed requirements cause us particular concern, for instance the routine and automatic acknowledgement of complaints, and the charging of no more than a geographic call rate for calls to our contact centres.

We are also concerned that Ofcom has decided to intervene in complaints handling as a by-product of their desire to improve sign posting to ADR. Whilst ADR is the last step in the complaints handling process, raising awareness of the former is not predicated on the fixing of uniform complaints handling procedures. Ofcom reckons increased awareness of ADR will "*in turn create greater incentives for CPs to have good complaints handling procedures to avoid the costs of ADR*" (4.31), which begs the question, why is Ofcom intervening in complaints handling if the incentive to have good complaints handling procedures is already there?

Ofcom's proposals for the recording and retention of all "complaints"

Our over-riding concern is that Ofcom is introducing this requirement to facilitate its compliance monitoring rather than because it will further the interests of citizens and consumers, or because customers are suffering harm in the absence of such processes. Ofcom is also introducing this requirement without properly considering the costs and benefits of stringent call recording and retention requirements, which will require a fundamental change in the way in which we collect information on customer contacts. Whilst we currently have logging processes in place, these are devised with the customer in mind and do not conform to Ofcom's proposals.

The Futuresight report

Whilst we found the Futuresight report interesting, it did not highlight any new issues from Orange's perspective. We already have a strategy in place to deal with the issues detailed.

Futuresight concludes that "*Consumers recommended an improvement in overall communication and a more honest, transparent and accountable approach if complaints processes are to become more effective and of value*". Customers are clearly demanding a dynamic (rather than automated) response to issues raised: the Futuresight report shows that customers require flexibility in the resolution of their complaints (pg 6). Increased process and automated responses will not help achieve this end but will only serve to frustrate customers who want a personal response to what is a personal problem.

We note that the Futuresight report was conducted in 2006. We would therefore question the urgency of Ofcom's proposals based on this report and the suggestion that a three month implementation period would be sufficient.

Ofcom has also not expressed whether it perceives unacceptable levels of customer service to be a trend that needs to be reversed, or whether in fact competition is playing a role in



solving the issue. The Futuresight report is a snapshot of the situation in 2006, and does not illustrate the direction of travel in terms of service levels. Orange is confident that service levels are on an upward trend for our customers as the customer experience is at the forefront of our reinvigorated strategy.



Specific Questions

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.”

We do not agree that Ofcom should impose a common definition of complaint across the industry. This would be impossible to implement from a practical perspective and would incur significant costs to stakeholders.

ADR is for the resolution of disputes and not complaints. Ofcom's primary concern in the present consultation is access to ADR. Therefore, the focus should be on a definition of dispute, not complaint. Ofcom suggests that a dispute can be defined as a “*complaint that has not been resolved between the consumer and a CP*” (3.9). However, this is incorrect as a dispute is an issue that cannot be resolved rather than one which has not been resolved.

Furthermore, Ofcom's definition of complaint for the purposes of ADR fails to fully reflect the fact that the purpose of ADR is to resolve disputes about communications services and not to serve as an arbiter for disputes about matters relating to CPs more generally. Whilst Ofcom has narrowed the initial definition used in the information request of 2007⁴, it is still drafted in such a way as to capture “expressions of dissatisfaction” about issues that fall outside the remit of CISAS, which is not only inappropriate but could lead to a frustrating situation for the customer. CISAS is not designed to be a general complaints handling facility. Its remit excludes, for example, complaints about advertising, handset/router functionality/faults, email/internet content, or business decisions on whether or not to provide a product or service. However, a customer complaint about one of these such issues could easily be interpreted as dissatisfaction with complaints handling itself or could even be mis-categorised as a complaint about our “products or services”. However, these general complaints would unlikely be eligible for resolution by CISAS. Even if we did agree with Ofcom's proposal to implement a single definition of complaint (which we do not), we would disagree with Ofcom's expansive definition of complaint for the purposes of ADR.

We are also concerned that Ofcom wants “*a common definition of complaint to make sure that [its] regulation properly captures the scenarios in which [Ofcom] think[s] individual consumers are exposed to harm and detriment*” (3.13). Ofcom needs to be careful not to confuse harm and detriment with dissatisfaction. Clearly the former is unacceptable and ADR regulation is in place to mitigate against this; but dissatisfaction is a subjective emotion which, whilst often unpleasant, is not harmful by definition. Ensuring customers are happy with the level of service they receive is the role of the CP. If we fail to impress and satisfy our customers, customers can and do switch (and Ofcom's research supports this). There is therefore no basis for Ofcom intervention in ensuring customer satisfaction (as opposed to

⁴ Information request definition: “Complaint” means any expression of dissatisfaction by a customer with their communications provider, irrespective of how it was communicated, including those complaints resolved at the first point of contact and complaints about faults. A complaint should not be confused with a query (i.e. a request for information).



customer harm) and Ofcom has not shown why it needs to get involved in the regulation of complaints handling and internal definitions.

Indeed, the only benefit of a unified definition set out by Ofcom appears to be to help ease Ofcom's compliance monitoring work. The risk is that resource is diverted from improving customer satisfaction to compliance.

Ofcom has also only produced a superficial assessment of the impact of imposing a single definition of complaint. Ofcom notes that changes may need to be made to internal procedures and systems without seeking to assess what these modifications might be and the cost of doing this. CPs are likely to already perform some form of record keeping (based on their own definitions of complaint) and they will have invested heavily in these different systems and processes. Homogenising the definition of complaint will necessarily require a standardisation of systems which will have a wide and varying impact on CPs. However, Ofcom deals rather dismissively with the issue: "*We appreciate that CPs currently use a number of different definitions of "Complaint" in their internal procedures and systems. However, we think that it is possible to have a common definition which can apply across industry*" 3.12). Ofcom does not further their assessment of how the implementation of a common definition might be possible. This perfunctory approach to impact assessments is symptomatic of Ofcom's approach throughout the consultation document – Ofcom says that it understands that its proposals are not without impact but does not seek to conduct the necessary cost benefit analysis to understand the effect of regulation.

Ofcom has not concluded that our current definition of complaint and complaints handling process is failing to prevent consumer harm. Our definition of complaint for internal purposes is much narrower in scope. Expressions of dissatisfaction are obviously dealt with on a case by case basis, but an issue is only considered a formal complaint once it has been escalated through our complaints handling process to our Executive Office, which handles all escalated, high-level and legal issues. Only then do we classify the customer contact as a formal complaint (i.e. an expression of dissatisfaction that hasn't been resolved through our normal processes). If it cannot be resolved at this level, then the issue may be taken to dispute with CISAS.

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.

We do not oppose Ofcom's proposal as we agree that the majority of complaints are resolved within the first 8 weeks. Orange supports the principle that if an issue cannot be resolved internally the customer should have the right to refer the case to an independent third party. However, we must be given the opportunity to resolve any issue internally first: it is not good customer service to divert to a third party too early in the process. Customers want their service provider to take ownership of an issue and to be proactive about resolving any concerns. Customers contact us in the hope and expectation that we will deal with the issue, without them having to go to ADR. If we fail to do so, they will seek out a new service provider.



Ofcom implies in the consultation that we are simply sitting back and making customers wait for the 12 week period to elapse. This is wholly unfair – Ofcom must appreciate that not all issues can be resolved on first call, although we seek to do so wherever possible – and completely overlooks the fact that in a competitive market, where service is a differentiator, companies have a commercial incentive to resolve issues as soon as possible. Indeed, it is precisely because Orange felt we could do more for our customers that we re-launched our customer centric strategy earlier in the year – this was driven by commercial imperatives and the need to retain/gain new customers rather than because of regulation. Ofcom must recognise that delaying the resolution process is immensely costly for companies as well as wearisome for the consumer. The cost and resource required for preparing ADR cases in particular are high. Therefore it makes business sense to resolve complaints in house and as soon as possible. It is incorrect to suggest that companies benefit by prolonging the complaints handling process.

If Ofcom implements this change, we would expect a surge in cases going to ADR to begin with (in view of the four week compression and some ongoing complaints at the 8-12 week stage now being due for ADR). We hope Ofcom will take this into account in terms of implementation timescales (see question 8).

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.

Orange has fundamental and serious concerns about Ofcom's preferred option⁵. Ofcom has not properly weighed up the costs v benefits of adopting this proposal nor qualified why their preference is for notice to be given to the customer in writing. A robust cost benefit analysis is particularly important in an area where Ofcom has not identified any failures in competition in protecting against consumer harm. Ofcom's aim is to raise awareness of ADR, but it is seeking to regulate complaints handling procedures more generally as a by product of this goal. This is not a proportionate approach to regulation.

By focussing on a formulaic process of correspondence and references to dispute resolution, Ofcom appears to be overlooking the fundamental purpose of a customer service operation. When a customer complains their prime concern is that their complaint is dealt with promptly

⁵ Whilst the question states that Ofcom's preferred option is 4, we assume that this is a typo as the explanatory text clearly notes that the preferred option is 3.



and resolved. Providing the vast majority of customers with what is likely to be unnecessary information at the first point of contact diverts resource away from this objective.

Ofcom also fails to address various practical problems with their proposals. For example, not all unresolved complaints are eligible for ADR. As per our response to question 1, Ofcom's proposed definition of complaint would not allay this concern as it would still capture issues, such as handset or router problems, which are outside CISAS's remit. Moreover, CSRs cannot be expected to make any subjective decisions about complaint types nor can customers be expected to agree with our definition of "complaint". Additionally, Ofcom has not considered how mobile operators are expected to send written notice to pre-paid customers, who form a major part of the mobile subscriber base.

Ensuring notice about ADR is given at the right time

As Ofcom notes (for example at 3.96), the key is to ensure consumers are informed about ADR in order to protect them from "*the potential harm which they may suffer if they are not aware of their right to go to ADR at the appropriate time*" (emphasis added). Information about ADR is superfluous if it is not well-timed and Ofcom's proposals therefore risk being expensive and ineffective. Ofcom has not considered the practical implementation of the ADR notice and the circumstances under which it would be received. We have enumerated some examples of unintended consequences below.

Firstly, providing information about "dispute" handling procedures after the first contact or after the issue has been resolved is confrontational and suggests we either aren't expecting to resolve the issue or aren't prepared to offer the best resolution without reference to ADR. This seriously risks undermining customers' perception of our commitment to customer service. Ofcom must not interfere in the day to day communications of operators, which is our bread and butter.

Secondly, it is possible that, upon receiving a letter, a customer may assume that it would be quicker to jump to the last stage in the process only to be frustrated by the response they receive from the ADR scheme. The challenge is to ensure consumer awareness of their right to ADR, without encouraging or generating premature approaches to ADR.

Thirdly, the receipt of a communication about ADR would lead to a confusing experience for those customers who believed their issue to have been resolved. These customers may contact us to query the notice and our resolution of the issue, thus driving up costs and extending average call handling/waiting times.

Fourthly, officious communications may be considered irritating by some consumers.

Finally, Ofcom suggests that the proposal would empower customers, but care needs to be taken to manage customer expectations. We already have anecdotal evidence that consumers see the £5000 limit on compensation and expect or aim to receive this when they go to ADR. There is always the possibility that they go to ADR and get less than what was offered because of inflated expectations and unrealistic claims. We agree consumers should be empowered but they should not be misled.



Ofcom's tracker survey shows that 15% of adults were aware of at least one of the two ADR schemes in 2007 (3.42). Whilst this could arguably be higher, we have to set this figure against customer satisfaction rates of around 86% (or 94% as per the Mobile Sector Assessment). As awareness of ADR is higher amongst those who have made a complaint, we can adduce that consumers with a need to complain do know of their rights (3.43). Moreover, Ofcom's own research (4.26) shows more awareness of CP Codes of Practice (CoPs) than of ADR. Ofcom believes there is a disconnect with these figures, but we would point out that it is a regulatory requirement that information about ADR is included in our CoP. So, this could be seen as an indication that because customers do not need to resort to the ADR stage of the complaints handling process they are unaware of ADR (because they do not need to read to that stage in the process); however, this information would be detailed in the CoP if they needed it.

Practical implementation issues

As mentioned above, Ofcom's consultation fails to mention how these communications will be provided to mobile pre-paid (PAYG) customers. We do not have validated registered information for these customers which means we cannot routinely send communications to customers in response to a complaint. We would need to obtain this information from customers at point of contact, which would add to the time taken to resolve the issue and which may irritate customers who have specifically chosen a PAYG package so they do not need to register their information with us.

Furthermore, practical difficulties will arise for multi-line customers (e.g. family talk plans or small business plans), as communications would be sent to the account administrator not the MSISDN owner, which is confusing and ineffective.

Ofcom's proposals simply do not tally with the reality of a customer service environment. Ofcom has not considered the impact of this additional requirement on those people who will have to implement them. For example, Ofcom seeks to define what is meant by "resolved" in order to compartmentalise those issues that would not trigger an ADR letter. Ofcom's definition of "resolved" involves a level of subjective judgement at front line that isn't practicable. For example, what if an issue is "resolved" on first contact, but customers then contact us again about a similar issue in a few days time. A value judgement is required of the customer service representative at this point: is this contact about the same issue (e.g. because it is a different issue with the same bill or a different issue with the same handset?) and should a letter be sent? The role of the CSR should be to deliver excellent customer service, not to log complaints and dispatch ADR notices. The more time a CSR spends compiling the complaints letter and categorising issues (see response to question 4), the less time they will spend serving customer needs. Ofcom appears to have provided this definition of "resolved" as a means of lessening the regulatory burden. However, in practical terms, Ofcom's requirement means that every single customer contact – regardless of whether it is a complaint or not – will need to be logged in order to ensure we can comply with the requirement to give notice about ADR.



Ofcom's proposals also do not consider the fact that customers contact us in different ways, not just via call centres. Customers also visit us in store and write to us for example (they will soon also be able to Instant Message us). Ofcom's proposed regulation would require a unified customer services system across all channels (retail, email, contact centre, letter writing) to track complaint timescales and dispatch letters. This is something we do not currently have and which would be expensive to implement (we cannot quantify this without a project to scope out the requirements, but it would likely be in the region of millions of pounds). In fact, Ofcom's proposals may jeopardise our ability to meet our goal to better service our customers. For example, we're investing in retail staff to ensure a more personal approach to customer service, as demanded by our customers. Ofcom's proposals could hamper this approach by introducing a level of bureaucracy and report writing in store that would seem cold and distant to the customer. Customers will feel that we're not dealing with their issue but simply writing it down. The right way to act in these circumstances is to explain the reason the problem has arisen and how to avoid it happening again. Having to take the customer's contact details, or even just having to open up a screen to record the "complaint" will interfere quite unnecessarily in the effective resolution of the complaint.

Ofcom's requirement also overlooks the fact that not all complaints are eligible for ADR. Ofcom's current definition is still so wide as to capture complaints that CISAS cannot deal with, for example complaints relating to faulty handsets or routers, TV services, internet/email/text/call content, business decisions we have made on whether or not to provide a service and advertising. Ofcom's requirement will therefore be very confusing and frustrating for a customer who receives a letter about ADR but then discovers later that CISAS cannot handle their claim.

Ofcom's unrealistic requirements could also threaten innovation as regulatory requirements, and the possibility of incurring a fine if these are not met, may discourage innovative new services from being brought to market quickly in case they generate "complaints".

In short, we believe that Ofcom is taking a theoretical approach to regulation rather than seeking first to understand the customer journey and the day-to-day operations of front line staff and their roles. We have extended invitations to Ofcom in the past to visit our call centres in order to better understand the operational impact of their proposals and the difficulties that they will pose from a practical perspective. This invitation is always open to Ofcom.

The lack of a cost v benefit analysis

We do not believe that Ofcom's impact assessment for this proposal stands up to "*profound and rigorous scrutiny*". The test for robustness, as established in the CAT's recent revocation of Ofcom's number portability policy⁶, requires that Ofcom equips itself with "*a sufficiently cogent and accurate set of inputs to enable it to perform a reliable and soundly based CBA*". However, the costs and benefits set out in Ofcom's rudimentary impact assessment have not been properly quantified or qualified. Ofcom's impact assessment only makes a very cursory assessment of the costs of regulation and does not balance this out with the consumer benefits of adopting this regulation.

⁶ http://www.catribunal.org.uk/documents/Judgment_1094_180908.pdf



Ofcom considers implementation costs will be negligible in the context of total industry revenues. We are alarmed by Ofcom's simplistic approach to cost benefit analysis. By this definition, Ofcom will be able to justify almost any regulation without due consideration of proportionality. As a starter for ten, Ofcom has not taken into account the fact that: different operators will have different costs; numerous strands of "negligible" regulation adds up in an environment where there are heavy economic and competitive pressures; and there are opportunity costs in implementing the proposals, particularly when we envisage the regulation to cost Orange millions of pounds.

Ofcom says that its preferred ADR option would cost £25 million to set up in the first year across the communications industry, "*falling somewhat*" in subsequent years. Such a vague analysis of the one off and ongoing costs is unacceptable and demonstrates a lack of due regard for proper economic analysis – there is no explanation of how Ofcom determined that costs would fall, and the quantification "somewhat" is far from being rigorous.

In order to alert Ofcom to the potential scope and impact of their proposal, we have provided a breakdown of costs: [CONFIDENTIAL]

Conclusion

Ofcom has not properly assessed the costs and benefits of implementing their preferred option. We do not agree with Ofcom's assessment that the test of proportionality has been met. Ofcom suggests in 3.96 (b) that this is the "*least onerous solution to achieving Ofcom's key objective of making sure that consumers are aware of their right to ADR*". Our initial cost assessment wholly disproves this. It may be Ofcom's preferred solution, but the conclusion cannot therefore be that it is "least onerous". Written information about ADR and complaints handling processes will not improve customer satisfaction levels and Ofcom has not assessed whether customer awareness would actually increase in light of these proposals. Ofcom has disappointingly taken a purely theoretical approach to regulation.

We must reiterate again the lack of logic in Ofcom's suggestion that it is not in the company's interest to improve complaints handling. This fundamentally overlooks the fact that we do not want to have dissatisfied customers for commercial reasons and are investing in customer service to this end. Increased process will just divert resource from our customer excellence objectives.

As the experts in communicating key messages to our customers, our recommendation is that Ofcom should not be prescribing exactly how we provide information on access to ADR. There is an array of options that can be used to raise consumer awareness – for instance, the promotion of ADR on the back of bills (which is not currently a requirement for CISAS members), in our inbox material, on our websites, or even on our IVR. Therefore, Ofcom should instead be considering a requirement (to be included in our Code of Practice or in the proposed unified Code of Practice, if Ofcom continues to favour this approach) to ensure measures are in place to raise awareness of ADR. This principles based approach would allow for competition, customisation, and is future proof.

Question 4: Do you agree that the notice about ADR which CP should give must be:



- (a) be in writing in a durable form**
- (b) be in plain English, clearly written and concise;**
- (c) Include a reference for the complaint;**
- (d) Include details of the ADR Scheme which the CP is a member of, including contact details;**
- (e) And summarise when the consumer has the right to go to ADR Scheme and the role of the ADR Scheme.**

As described above, we wholly disagree with Ofcom's proposals for giving notice about ADR. Therefore we do not agree with the proposed content of the notice.

Ofcom refers to the importance of brand distinction and to the fact that they do not wish to prescribe a standard text as "*the style and format of customer communications are an important part of CPs' brands and a way in which they can distinguish themselves*" (3.91). However, the detailed nature of Ofcom's regulation provides no flexibility on how and what we communicate to customers. For example, Ofcom has ruled out text messages as a means of communicating to customers even though this is a logical and immediate option for mobile customers and would potentially be more likely to be read than a long letter. Also, this method, if it were deemed to be an appropriate mode of communication, only requires knowledge of the MSISDN to be effectuated. We cannot send letters or emails to PAYG or multi-line customers (in the case of the latter, if we did, it would have to be sent to the account administrator rather than the MSISDN owner, which is confusing and ineffective).

Part c of the requirement poses particular concerns, as this could inject the most manual elements into the process: the more manual the process, the more expensive it will be. Therefore, Ofcom needs to clearly establish why this piece of additional, unique information is required and at what cost. That said, it is not clear whether Ofcom is requiring us to include a reference number or a summary of the complaint in the notice? The consultation document would suggest Ofcom requires some means of identifying the particular complaint (see 3.92 - this is supported by the question that was asked in the 2007 information requested); however, the draft General Condition would suggest that Ofcom requires a summary of the complaint.

Ofcom's thinking is confused, which adds to our concern that Ofcom is relying on theoretical assumptions rather than taking an evidenced based approach to regulation. If Ofcom were to mean that it requires a summary of the complaint, we would not be able to automate this part of the process, which would significantly increase costs. If Ofcom were to mean some sort of reference number, this would fit in with an automated process. However, we do not believe it is necessary to require that this reference number be unique to the complaint e.g. a complaint reference number. Each CP will have their own means of identifying customers, for example account numbers, which could be used as the reference point. The provision of a customer complaints reference number is not customer friendly: all complaint details will be noted on customer accounts in any event, so there is no need for the customer to remember and give us yet another reference number.

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?



We broadly agree with the proposed criteria. Orange supports the use of clear and transparent criteria to ensure accountability of the ADR schemes. We will comment on the detail of the criteria descriptions as part of the ADR scheme review.

We are, however, concerned with the suggestion that having more than one ADR scheme may not be desirable. We believe the current model works well and that Ofcom has not found any evidence to the contrary. Competition in telecommunications markets helps to ensure customers' key needs are met at the lowest possible cost; and the same principles should apply in ADR. Competition brings cost effectiveness and this should not be viewed negatively, as it is a benefit for consumers and industry alike. Costs saved can be better spent on new products and services.

Orange did not set up CISAS on the basis of cost alone. We wanted to ensure an ADR scheme that was as simple to use for all parties as possible. If processes are not clear/streamlined, disputes are resolved less effectively and efficiently, which increases costs (i.e. more time spent on each case internally) and further impinges on the customer experience. We therefore disagree that competition in ADR risks a "race to the bottom in standards". Our choice of ADR provider is an extension of us so it is in our interests that they do a good job (even though we hope most customers never have to resort to ADR in the first place).

Competition in the market also improves standards as each of the schemes will be the other's fiercest critic and the first to point out any issues to Ofcom, which acts as the benchmark. Ofcom has the important role of ensuring that standards are met and to ensure best practice identified in one scheme is implemented in another. This has already happened (see 2005 review). The transparency and like-for-like comparison provided by having two schemes increases pressure to maintain and improve standards.

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?

We do not have any objections to a requirement to comply with a single Ofcom Complaints Code of Practice (CoP), so long as this is principles based and focuses on outcomes rather than processes.

However, we are not convinced that it would make any practical difference to the consumer whether each Communications Provider (CP) has their own Ofcom approved CoP or whether everyone abides by a single Ofcom Code. In both cases, Ofcom still has the final say over the requisite minimum standards. The change therefore is not consumer focused but compliance driven, as illustrated by the fact that the only advantage identified by Ofcom for a single code is that compliance monitoring would be less resource intensive for Ofcom (4.41/4.61).

The need for minimum standards



There is no evidence that there is no minimum level of protection for consumers under the existing General Condition. In fact, Ofcom approves each Code of Practice and therefore there is already a mechanism in place to ensure a uniform standard for complaints handling. Ofcom has in the past made comments on Orange's Code of Practice in order to ensure minimum standards without inhibiting innovation. If Ofcom thinks there is a lack of consistency, this would suggest that Ofcom's vetting has not been sufficiently robust.

Ofcom suggests that there is a degree of uncertainty about regulatory requirements under the current system (4.35) – although Ofcom provides no evidence as to whether these concerns have been voiced by stakeholders. We believe that any scope for uncertainty is addressed through Ofcom's existing code template. Accordingly, Ofcom could consider formalising this template as guidance in the General Condition (as per the PRS and NTS Codes of Practice, if Ofcom deemed this to be appropriate).

Ofcom asserts that that a low awareness of individual CP Codes of Practice necessarily means the benefits of having a Code of Practice is reduced. We would disagree, as CPs are still bound by the standards set out therein and have a duty to ensure compliance with their own code. Ofcom should consider these statistics in the context of the wider market place and customer satisfaction. Bearing in mind the satisfaction rate is 94% (as per the MSA – or 86% as per Futuresight), we would argue that an almost 50% awareness rate of CP codes is not as low as Ofcom implies. It would suggest that even those customers who do not have a need to complain are aware of the code. That being said, we are not convinced that awareness of a particular Code of Practice is a sound measure of the effectiveness of regulation. Whether or not a customer is aware of a particular Code of Practice is irrelevant - what is important is that we are complying with the commitments set out in our Code of Practice.

The risk of overly prescriptive requirements within the single code

Whilst we do not oppose the principle of having a single Ofcom code, we are concerned that Ofcom's proposed standards are not high-level, as purported in the consultation. In fact, they are extremely prescriptive and limiting in nature. Ofcom risks adopting an approach that is focused purely on monitoring technical compliance rather than mitigating against consumer harm⁷. This approach would be harmful to customers as they are processed rather than served. Ofcom should be focusing on how goals should be met rather than dictating a means to an end, particularly as there is no evidence that the existing system is failing to such an extent that this is necessary.

Such detailed rules are also unlikely to be future proof. Ofcom would have to conduct a full consultation in order to amend the detailed mandatory standards.

⁷ This is already evidenced by Ofcom's ongoing investigation into General condition 14.2. Ofcom has focussed an unprecedented amount of resource on this investigation. However, the evidence of consumer harm experienced has not been monitored or measured as Ofcom hones in on technical compliance. This approach has led to Ofcom interpreting the regulation in the strictest of senses without considering the reality of consumer behaviours. We are concerned that resources are being diverted to compliance for the sake of compliance rather than the sake of the consumer, which is Orange's primary concern. For example, we have been asked to move away from pricing transparency initiatives that we have implemented to make 09 pricing clearer for our customers (i.e. Ofcom has said that our clear and simple banding of 09 number ranges into 4 price bands should be replaced by a comprehensive 146 page list of 09 pricing information).



Before Ofcom proceeds to implement these overly prescriptive processes it is imperative that a robust CBA is performed.

Ofcom needs to conduct a full cost benefit analysis (CBA)

Ofcom provides an explanation for wanting to avoid detailed standards: "*We may prescribe specific details of complaints handling procedures which inappropriately interfere with a CP's customer relationship management strategies to the detriment of their consumers. We are concerned that individual consumers are appropriately protected and empowered but we think it is important to allow CP to determine the specific details and procedures which best fit within their business models to fulfil those basic standards*" (4.43). We wholly agree with this comment, but Ofcom's proposed policy does not bear out this purported concern. Ofcom has not fully identified the impact of proposals on our Customer Relationship Management (CRM) strategies and implementations nor has it proposed high-level principles that will allow us the flexibility to develop solutions in line with our business models. Ofcom goes on to remark: "*the more detailed our prescription of standards are the higher costs are likely to be*" (4.44), but the cost of implementing incremental steps are not quantified nor is the fact that cost implications will differ from CP to CP considered.

Ofcom's analysis is not only weak on the cost side either: Ofcom has not attempted to quantify the benefits of each detailed proposal for consumers, but general remarks are made about the benefits of the overarching principles. Whilst we support the principles set out in the code, we do not agree with the detailed processes prescribed to meet these principles and Ofcom has not provided any evidence to convince us otherwise.

We have considered and commented on each proposed requirement in turn.

- ***Transparent***

We share the view that complaints handling information should be included in Terms & Conditions. We also agree with the proposed minimum complaints handling information that is to be contained on the relevant webpages.

However, we disagree that Ofcom should mandate that complaints handling information be one click away from the homepage (Ofcom makes this suggestion in the consultation, although this is not included in the draft General Condition). Ofcom should not seek to define how websites are set out and the number of maximum clicks there should be to any content. Orange.co.uk is more than just a corporate site; it is an internet portal much like Google or Yahoo! or indeed the BBC.

In short, we agree that one of the principles must be that the information should be "accessible" and "prominent" but Ofcom should not specify how this is to be achieved.

- ***Accessible***



Calls to contact centres to cost no more than geographic rates

Ofcom's proposal to require calls to our call centres to be charged at no more than geographic rates is not only disruptive, but also ill-considered. Fundamentally, Ofcom fails to recognise the basic point that the cost of a call to any number range is controlled by the originating provider, not the terminating service. We cannot control the rate at which a customer calling us from any network other than Orange will pay. For example, when the new 0870 rules are implemented, some CPs may charge calls at a geographic rate, whilst others may not. Moreover, the cost of the call will depend on the customer's package: mobile to mobile calls may be cheaper for some customers than calls to numbers charged at geographic rate and so Ofcom's requirement would discriminate against these users. It is disappointing that Ofcom has not considered this before proposing an extremely costly change for Orange.

This requirement is also neither technology neutral nor not unduly discriminatory. From a mobile perspective, it is logical for us to use a mobile number for our contact centres. The contact numbers which we use form part of our brand and customer experience: our contact number is not a complaints hotline – we seek to provide a one-stop, integrated service. Ofcom's proposal will therefore intrude on our wider customer interactions.

Ofcom suggests that their requirement is much less prescriptive than that which was initially proposed in the 2007 information request (footnote 17). However, this is not the case – Ofcom is simply changing the requirement from requiring CPs to adopt a free phone number to using numbers charged, in theory, at a geographic rate. The restriction is still there. It makes little difference to us whether we use a geographic number or a free phone number. From a mobile perspective, we would still need to adopt an expensive number change.

Ofcom's requirement is also ill conceived as it has not considered the cost of requiring a number change. We would have to change and re-print all branding and customer communications material in order to publicise the change to our customers. This will be an extremely expensive process bearing in mind all the collateral that is used by Orange. As we have highlighted to Ofcom in the past, print lead times are substantial and it will take time for customers to acknowledge and become used to contacting us via an unfamiliar number.

Accessibility for disabled and vulnerable customers

At Orange we aim to make a positive difference to people's lives, with simple and innovative services that help everyone communicate better. We recognise that while we run a successful and profitable business, society holds us to account for how we do that. That's why we try to set and stick to increasingly high responsibility standards.

Whilst we understand and agree with Ofcom's intention to improve accessibility by introducing measures specifically to improve ease of access for disabled users, we do not favour a segmented approach to customer service. Ofcom suggests that dedicated procedures may be necessary for disabled and vulnerable customers. However, in our experience, this is not an effective use of resource – particularly in view of the range of disabilities and some customers' understandable reluctance to talk about them. Customers



do not want to be segmented in this way. Orange takes an inclusive approach to customer services – in other words, our processes are designed to be accessible to all customers. Complaints are escalated to our diversity team on a case by case basis, which provides for a much more effective service and one which can be tailored to the individual's needs.

We are also concerned about Ofcom's suggestion that specific procedures may be necessary for vulnerable customers. It is not clear to whom Ofcom is referring by this definition as it is a very broad and at times subjective definition – does Ofcom intend for specific provision to be made for those customers who do not speak English as a first language? Low income customers? Young or elderly customers? All of the above? As per our approach to disabled customers, we truly believe that an inclusive approach which ensures accessible processes for all our customers, with specific cases dealt with on a case by case basis, is the best means of delivering excellent customer service. We are concerned that Ofcom has included this reference as a catch all provision to show that it is “doing something” without considering the actual requirements and preferences of their target audience.

Other proposals

We broadly agree with the remaining proposals under “accessibility”, although we would question the specific proposal for information about complaints handling procedures to be included in a document dealing exclusively with complaints handling. Again, this is an example of Ofcom taking a prescriptive approach to regulation without considering the pros and cons of introducing the requirement other than to ease Ofcom's compliance monitoring duties. For example, at the moment, from a mobile perspective, we include all our GC 14 codes of practice in one document for ease of reference for the consumer. Ofcom's requirement would prevent us from taking a consumer-oriented approach by obliging us to provide separate booklets for purely compliance-oriented reasons.

- ***Responsive***

We agree that there is a need for clear timeframes and escalation processes for complaints. However, we don't think Ofcom should specify the number of escalation points for these purposes. Indeed, it is a meaningless requirement – a complaint could either be escalated very quickly through 5 points or very slowly through the one and only touch point. Ofcom's focus must be on outcomes, not process. The latter only serves to restrict our ability to devise complaints handling processes to best meet the changing needs of our customers. After all, this is the expertise of our operational colleagues who deal with complaints and customers on a day to day basis, not Ofcom's.

As per our response to question 3, we are also wholly opposed to the proposal for the written acknowledgement of complaints. We have serious reservations about Ofcom's focus on proposals that will increase the administrative burden for the sake of purported ease of compliance monitoring rather than because they will tangibly improve the consumer experience, the attainment of the latter being the specialism of CPs.



Customers do not want their CP to simply and automatically acknowledge a problem. Instead, they want responsive, concrete action to be taken to deal with issues as and when they arise. To reiterate our practical concerns about requirements to send routine correspondence, Ofcom's proposals do not consider the impossibility of sending automatic communications to PAYG customers, or multiline (including business) customers, or even to converged customers (where different members of the family may use different services, but there is only one account holder who receives all correspondence).

Our overarching concern with this and other Ofcom proposals is that the costs and benefits have not been properly quantified. There is no evidence that there will be an incremental improvement for customers through this specific change. We cannot see any customer benefit in receiving an automated response, which would be generic and not demonstrate that action has been taken to resolve the issue. It is not sufficiently robust to argue that acknowledgement of a complaint could be provided at no extra cost if we have to inform customers of ADR after their first complaint anyway (when this requirement is prospective as well). Ofcom says that if their ADR proposals are not implemented, the cost of acknowledgements would be the same as for implementing the ADR proposals i.e. "*in the order of £20 million per year*" (4.64). However Ofcom has not explained the rationale behind this vague estimate and has not justified how they arrived at the £20 million figure. We do not currently send out an automated letter/email to customers who complain in-store, in writing, or to our call centre, therefore there will be a significant cost involved in meeting the requirement.

- **Effective**

We agree with the principles established in this requirement i.e. that we should have, and comply with, measures to monitor and review the implementation of complaints handling procedures. This is a much more goal focused and proportionate approach to regulation than some of the other proposals, which allows for customisation according to each CP's business models and customer base.

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.***

Orange does not agree with Ofcom's proposal. Ofcom has not fully scrutinised the impact of the proposal nor performed a robust cost benefit analysis (CBA). Ofcom is in effect proposing to regulate how our customer relationship management systems should be structured and operate. So, Ofcom must first seek to quantify the effect this will have on competition as operators will have less flexibility to procure and design customer relations management



(CRM) systems and processes according to the needs of their customers, business requirements and brand values.

The driver for Ofcom's intervention in CRM, which is a cornerstone of competition, is not to protect or benefit the consumer but "so that [Ofcom] can request effective information to ensure compliance (1.10)". This is not in step with the spirit of Ofcom's duties under the Communications Act. Ofcom has not demonstrated why such compliance monitoring is required or how it will be carried out. Nor has Ofcom intimated at any point that such punctilious monitoring is necessary for other General Conditions. This sets a worrying precedent and risks bringing into question Ofcom's commitment to its regulatory principles, namely a bias against intervention and a preference for the least intrusive regulatory mechanisms.

Ofcom recognises that it cannot require CPs to provide it with information that they do not have and so it is seeking to impose prescriptive logging requirements in order to ensure this information can be provided in future, if needed. It is neither proportionate nor objectively justifiable to require us to log complaints just to give Ofcom this ability (5.5-5.6). The impact on competition and the customer experience must outweigh Ofcom's need to facilitate its day to day activities. In any event, it is not clear how access to such records would assist Ofcom: Ofcom states that logged information is needed to help pursue effective enforcement; however, why are so many details needed when Ofcom does not act on individual complaints on a routine basis?

We also believe that Ofcom has not duly considered the requirements of the Data Protection Act (DPA). Ofcom's proposals could lead to a DPA burden for CPs which far outweighs the possible compliance monitoring benefits for Ofcom's own purposes. Ofcom notes that the logging, retentions and retrieval proposals will be subject to the DPA, but Ofcom has not detailed what these conditions may be and what they might require, or considered the right Ofcom should have to such personal data. Orange has a bespoke means of logging customer contacts and any changes to the logging or processing of personal data could incur significant additional costs. We therefore do not support any mandatory requirements to log data. Ofcom's proposals would also require us to capture personal information for our PAYG customers in order that we can comply with the requirement to send out details about ADR etc. Customers may specifically have chosen to use PAYG services in order not to have to disclose personal data. It is not proportionate to require PAYG customers to log their data with us simply to enable us to fulfil a regulatory obligation to provide complaints information. Indeed, it could be argued that this additional bureaucracy could deter customers from pursuing complaints altogether.

Ofcom has also not explained why it believes it is proportionate to hold data for 15 months, when the proposed timescale for dealing with complaints is 2 months (with an additional 6 weeks required for ADR). We also note that data retention regulations only require data to be held for 12 months. We would reiterate that we already have our own systems and processes in place for recording customer contacts. Any mandatory requirements to do this in a specific manner would incur significant cost and interfere in our day to day activities.

Practical implications of Ofcom's proposal



Ofcom fails to consider the practical impact of its proposals. The task of recording complaints in accordance with Ofcom rules will fall to Customer Service Representatives (CSRs). A CSR's primary concern is to serve the interests of the customer. Any logging requirement will be seen as an additional task that HAS TO BE done rather than NEEDS to be done in order to fully service the needs of the customer. It will not assist them in their day to day job or help them to deal with customer issues and therefore will not entail financial reward. We already have effective systems and controls in place to ensure the appropriate logging of contacts, and these are kept as user-friendly as possible precisely because we do not want CSRs to be detracted from their responsibility to service customers. Ofcom's logging requirements will add unnecessary process to CSR's work load and average handling times will no doubt increase (without commensurate consumer benefit). As offered above, we would be happy to facilitate an Ofcom visit to our call centre so that Ofcom might experience the day to day life of a CSR.

Ofcom has also not considered the other channels of contact available to consumers e.g. retail, correspondence, instant messenger. A single logging system would need to be built in order to allow the centralised logging of customer contacts across all channels.

At the moment, we have a notepad system for recording customer issues, which we are gradually rolling out in stores as a pilot, but which is not yet widely deployed. Moreover, the notepad system is designed to allow CSRs to capture general information which will be useful in the resolution of an issue, not specific data which is only required for logging purposes.

A call reason capture tool has also recently been rolled out to our call centres (a different system is in place for broadband and mobile), but this would not allow the gathering of information in line with Ofcom's requirements. These are designed to help us forecast and plan our customer service resource according to demand. Amending these new systems would incur significant cost, reducing our return on investment. Furthermore, this system is not available in retail outlets or to our correspondence teams because they are aimed at managing call centre resource specifically.

Ofcom has also not considered the wider impact of their proposals on our operations more generally. In effect, Ofcom's requirement necessitates the logging of all contacts, since dissatisfaction is subjective and if an issue only becomes a complaint after several calls, we are expected to know the date of the first contact (in order to assess when the 8 weeks have passed for ADR purposes, according to Ofcom's proposal). All contact will therefore need to be logged – including every top up and query. This is clearly not proportionate. Moreover, in the case of correspondence, which is not a real time medium, it would be impossible to know immediately whether customer is happy with our first contact resolution or where an issue needs to be logged as a "complaint" (for example, a customer may have called and had the issue resolved/escalated in the meantime).

We believe that our current logging systems are sufficient for the purposes of managing complaints handling timescales. After all, we are currently able to measure a 12 week timescale without the additional administrative burden proposed by Ofcom (i.e. without complaints specific logging).

Cost implications of Ofcom's proposals

Ofcom needs to understand the costs of implementing these requirements to ensure that record keeping for compliance purposes is proportionate. However, Ofcom has not conducted a detailed cost benefit analysis.

Ofcom's impact assessment is based on very vague estimates. This does not take into account the fact that each operator has different levels/modes of logging and costs may vary considerably. There would surely need to be an element of industry co-ordination to ensure consistency, which would also add to costs and implementation timescales. Despite this, Ofcom asserts that *"Our proposal is that the costs associated with Option 2 are likely to be proportionate to the benefits it creates. Therefore at the very least we propose to impose regulation reflecting option 2"* (5.26). Ofcom's CBA is not robust enough to justify this statement.

Ofcom sets out three options in the consultation, one of which is obviously unrealistic for the purposes for which the proposal is being made (i.e. maintenance of complete records of all stages of a complaint i.e. including call recordings). Setting out three extreme options, then selecting the less onerous option is no substitute for a proper cost benefit analysis: it is not simply a matter of saying an option is proportionate because other options are less so. Ofcom's proposal is also disproportionate because it imposes costs on all operators rather than those who have been found in breach of regulation. Ofcom has not stated that consumers have suffered harm from a lack of monitoring or that companies are failing to properly record customer issues. Ofcom is proposing this regulation purely for its own compliance monitoring and statistics gathering purposes.

We are unable to provide a cost assessment for the proposal at this stage (this would require the launch of a project, as requirements gathering and project scoping and development would be needed); however, as an indicator of costs we have set out some of the changes that Ofcom's requirements would entail for our systems and processes.

We would have to completely overhaul our current systems if we were to log and monitor all complaints based on Ofcom's definitions and requirements as we do not currently track complaints in this manner. Our record keeping is aimed at facilitating the resolution of issues (i.e. what information does a CSR need in order to follow up a contact) and not the systematic categorisation and logging of complaints for compliance monitoring purposes.

Ofcom has also not considered the costs of retrieving or processing the information for Ofcom's compliance monitoring purposes. As was highlighted during data retention discussions, the cost of retrieving information can be much more than the cost of storing information (and the latter affects the way in which the former is performed).

Ofcom makes the assumption that costs are small on an industry wide basis, based on information gathered as part of their informal information request. As well as being incomplete, this conclusion is clearly also not "not unduly discriminatory" as some parties will



incur more costs than others depending on how closely their existing logging arrangements match Ofcom's proposals.

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?

We do not believe that Ofcom's proposed implementation period is realistic. Ofcom is proposing fundamental changes requiring wholesale systems and process changes. If implemented, there would be significant disruption to our operations. Furthermore, Ofcom first began work on this dossier in 2006 (date of the Futuresight research). Bearing in mind the time it has taken Ofcom to publish its proposals on the one hand and the lack of identifiable consumer harm on the other, Ofcom has not provided any evidence to suggest that these changes are required with such urgency. Whilst Ofcom has been considering these proposals, Orange has developed and implemented a practical strategy with a clear plan to improve customer service.

We have summarised below our reasons for disagreeing with the proposal for a three month implementation period:

ADR and complaints handling proposals

The requirement to send out a systematic letter in response to customer complaints will require an overhaul of our current systems and processes. In order to fully assess the changes required and the cost of doing this, we would need to conduct a full requirements gathering and planning exercise, which would in itself take months. If systems design and implementation is needed, this will take many more months. The recruitment and training of almost 1000 new staff (and the possible construction of new call centres) to manage the expected increase in average handling times will be a mammoth task.

With the potential increase in cases going to ADR in the short term, we will need a bedding down period both to deal with the additional cases that have to be managed in view of the compression of the complaints handling process to 8 weeks and to ensure that we have the necessary internal resource to deal with this. Bearing in mind we would expect Ofcom to launch an investigation into our compliance immediately after the implementation deadline, we are concerned that 3 months is insufficient to ensure compliance.

Any changes to our contact numbers would also require a significant amount of time to implement and promote. For one, all our communications will have to be reprinted at huge expense. This cannot be done haphazardly as our brand is central to our strategy.

Record keeping proposals

Again, we do not currently have a unified system in place across all products and channels to allow for the categoric logging of all contacts according to Ofcom's definitions. This would likely require significant development and systems integration work. Staff would also need to



be trained in order to ensure compliance with Ofcom's regulations. Ensuring we adhere to Ofcom's logging requirements will be an additional task for CSRs and retail staff whose sole responsibility should be to ensure they deal promptly and effectively with customer enquiries. In short, this change would require significant project resource impacting thousands of front line operations and therefore cannot be shortcut.

We cannot give a precise timescale at this stage, but based on our response to the above questions, we cannot see anything less than 18 months being possible to achieve these tasks, and even this is a conservative estimate. We are extremely concerned that Ofcom does not fully appreciate and understand the impact of its proposals.

All queries in relation to this response should be to Clare Seabourne, Regulatory Analyst, Orange, The Point, 37 North Wharf Road, London W2 1AG – clare.seabourne@orange-ftgroup.com