

DIF Response to Ofcom's Consultation on Telephone Directory Information Obligations and Regulations

Revocation of USC7

1. We note that The Number is currently appealing Ofcom's finding on the lawfulness of Universal Service Condition 7 ("USC7").
2. Whether or not USC7 is ultimately found to be unlawful, it is still the case that the UK DQ industry and consumers need OSIS to continue to be maintained and supplied by BT on a regulated basis, either under USC7 or, if USC7 is ultimately found to be unlawful, under a new robust and stable regulatory regime for the maintenance and wholesale provision of OSIS data on fair, reasonable, objective, cost-oriented and non-discriminatory terms.
3. Regulatory underpinning equivalent to that provided to date by USC7 is the only way to secure the continued functioning of the UK DQ industry.
4. DQ providers have built their systems around the existence of OSIS and made the necessary investment to enter the deregulated DQ market on the basis that the supply of the essential input for the industry, namely comprehensive UK directory information, would be on a regulated cost-oriented basis. OSIS is a relatively efficient way of aggregating directory data and ensures that the DQ industry can offer high quality, daily updated DQ services to consumers.
5. To now move to a system where there is no pre-existing regulation on OSIS would be incredibly detrimental to the DQ industry and to its customers. BT has a monopoly position in the supply of comprehensive directory information and would be able arbitrarily to increase pricing for and restrict access to OSIS data. Prices for OSIS (and for consumers) would be at risk of increasing significantly, and consumers would lose out on the choice, quality and innovation which they currently enjoy, as DQ providers either go out of business or are forced to provide a significantly inferior product as a result of inferior data.
6. Competition law would not adequately address anti-competitive behaviour by BT because Ofcom and/or the affected DQ provider would not be able to enforce the competition rules quickly enough to prevent DQ providers going out of business as a result. Competition law actions are lengthy and very expensive and would require Ofcom and/or the affected DQ provider to demonstrate, in every instance, dominance, abuse, and effects on the market. Most DQ providers will not have the money or other resources to bring such actions and we suspect that Ofcom would also struggle to cope with the volume of cases and disputes which are likely to result.
7. In addition, although BT may currently argue otherwise, we feel strongly that BT would not have sufficient commercial incentive to maintain the comprehensiveness of OSIS absent pre-existing regulation, and that regulation (USC7 or an equivalent condition) is therefore required. The OSIS database and the provision of DQ services are not in any sense key parts of BT's business, nor do they contribute significant profit to the business. Where BT finds itself with limited resources, it will naturally focus those on areas of the business which are more profitable or strategically important.

8. Given that BT itself competes with DQ providers to provide DQ services, there is an incentive on BT to provide a less comprehensive database to its competitors if there is no regulation to prevent it from doing so. Any lack of comprehensiveness in individual DQ services will have a detrimental effect on the reputation of DQ services generally.

Inadequacy of GC19

9. We are very strongly of the view that GC19, even in its enhanced form, would be a totally inadequate regulatory mechanism for the DQ industry, and that trying to use GC19 would be totally unviable because, among other things: (i) the definition of GC19 remains too narrow and too basic and still would not include, for example, essential grouping, captioning and processing data, (ii) the voice telephony market is fragmented and DQ providers would need to contact hundreds of different operators (and potentially also 1000+ resellers under the revised GC19) to get the data; and (iii) there are no arrangements in place with regard to the frequency and format in which that GC19 data might be provided. It would be impossible for DQ providers to rely on GC19 because of the contractual, logistical and economic difficulties in doing so.
10. In addition, it would require huge investment and years of effort for any third party to try to replace OSIS with an equivalent database, and GC19 would be totally inadequate for that task. BT's failed OSIS Replacement System illustrates this.
11. Communications Providers have differing views for the use of their data and so any company trying to aggregate GC19 data will have to negotiate with hundreds of companies and may have differing license terms for each supplier which would make sublicensing the data almost impossible.

Grouping

12. Users expect and currently receive directory information retrieved from grouped listings, and it is estimated that almost half of all business listings are grouped. A DQ service without grouped listings would not be comprehensive, would be difficult to search, and would not be of the same quality as those currently provided.
13. In our view, it would be impossible for anyone other than the voice telephony provider (already collecting the requisite information in the context of its voice telephony service) or OSIS, which currently receives that information from the upstream providers and in some cases carries out grouping on their behalf, to group listings.
14. Grouping data should therefore be included in GC19 and the drafting of the revised GC19 amended accordingly.

Other enhancement to GC19

15. Whilst we cannot overemphasise the inadequacy of GC19 as a regulatory substitute for USC7, it could, as Ofcom suggests, be enhanced by including end-user information and non-geographic numbers assigned for use in public Electronic Communications Services. We support Ofcom's recommendations on GC19 in so far as they go; however they do not go far enough.

16. Essential grouping, captioning and processing data has not been included and nor has business description and business/residential identifier (key for determining the information required from the caller before a search is made, and also for reverse searching) or the unique identifier attaching to every single existing directory entry in OSIS enabling an update to be matched to the existing entry in a DQ provider's database. Furthermore the DE, DQR and XD flags which are critical for the provision of effective directory service have also been excluded.

Comprehensiveness

17. To the extent that OSIS and, as a result, current UK DQ services contain almost no mobile numbers, increasingly fewer fixed numbers (for example, approximately 54% of residential numbers are now ex-directory) nor any VoIP numbers, we strongly disagree that current directory services meet the criteria of comprehensiveness.
18. One solution would be for General Condition 8 ("GC8") to be amended to require fixed and mobile operators to provide subscribers with a directory listing, after giving them full information about the listing options available.
19. Details of subscribers should also be included in directories unless the subscriber objects to this (i.e. an opt-out approach should be mandated for both fixed and mobile (and VoIP)).
20. Given the increasing popularity of VoIP services, a database of UK directory information would not be comprehensive if it did not include VoIP numbers. We note that Ofcom proposes to extend the scope of GC19 to include numbers for subscribers to broadband-only VoIP services, but there should be a clear requirement that these numbers are in future contained within OSIS (as OSIS is the only means that DQ providers will realistically have to obtain directory information going forward, whatever Ofcom decide on the scope of GC19).

Rights of access and availability of DQ services

21. Notwithstanding that GC19 is totally inadequate as a standalone regulatory mechanism for the DQ industry, we agree with Ofcom that modifications should be made in order to clarify the rights of access for intermediate suppliers/aggregators of directory information at the wholesale level under GC19.
22. Also, with regard to 'rights of access', once data has been provided to DQ providers then, subject only to data protection considerations, DQ providers should be unrestricted in their use of that data for the provision of information products and services, but not for indirect and/or direct marketing. BT's PEP process, in particular, is unnecessary and unjustifiably delays the arrival of new products onto the market, not to mention also giving BT advance warning of its competitors' planned new service offerings. We would also remind Ofcom of the difficulties OSIS licensees experienced when BT tried to impose new licence terms several years ago.
23. As regards ensuring access to DQ services, it is crucial to maintain GC8 on Communications Providers to ensure that the universality of provision is maintained and

that their subscribers have access to at least one DQ service. We would in fact like to see mandatory universal access on a non-discriminatory basis for all DQ numbers to be available on all networks (including IP and mobile networks). Anything else risks distorting competition in the market and limiting consumer choice.

BASIC DETAILS

Consultation title:

Responding to Ofcom's Consultation on Telephone Directory Information Obligations and Regulations

To (Ofcom contact): **Markham Sivak**

Name of respondent: **Antony Allen**

Representing (self or organisation/s): **Data8 Limited**

Address (if not received by email):

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