

Here are our comments:

Section 3

Question 3.1

We are unable to comment on the legality of USC7. We do however strongly urge that if it is revoked Ofcom must replace it with some alternative way of imposing equivalent obligations on BT. This could be achieved through regulation or voluntary contractual undertakings by BT.

Question 3.2

Comprehensiveness – We agree that DQ services provide a relatively comprehensive directory of geographic landline numbers. However, it is far from comprehensive in that it excludes the vast majority of mobile numbers, non-geographic numbers and VOIP numbers.

We understand that there are some 26 million landline telephone numbers in the UK and 50 million mobile numbers. That means that OSIS currently only contains 34% of all UK landline and mobile telephone numbers. For Ofcom to meet its obligation to ensure that there is a comprehensive directory available in the UK, it must surely take action to oblige the mobile providers to provide these numbers to OSIS. Even if the vast majority of these numbers were flagged as Ex Directory, it would still allow greater consumer satisfaction in that it would allow a DQ search to be ended so that the end user knows that it is pointless contacting other DQ services looking for the same number.

The fact is that mobile providers have long resisted calls for them to provide data to OSIS hiding behind lack of end-user consent, even though they have done virtually nothing to put in place processes to capture that consent. We believe that mobile operators should be required to notify their users that they will be included in directories or obtain their opt out; that those that opt out should be flagged as Ex Directory; and still be provided to OSIS and that additional DQ categories should be introduced for mobile users. For example, a half way house DQ category might be one which allows a DQ provider to text the mobile user advising the details of someone that is trying to reach them.

Affordability – We agree that current DQ services are relatively affordable (some types more than others eg. Internet more than voice). We believe that the availability of OSIS on a cost orientated basis has been the critical factor in ensuring this affordability. In an un-regulated environment this affordability will come under serious threat with BT and other communications providers being free to charge on a non cost orientated basis for data elements that do not fall under GC19, many of which are critical to the provision of DQ services.

Quality – The current high quality of directory services derives from:

- Availability of a centrally managed database providing a comprehensive and consistent platform for all services;
- Daily updated data feeds
- The wider data fields that OSIS provides as compared to GC19

All of the above will be threatened by Ofcom's current proposals.

Availability – the key threat to availability within these proposals is with respect to Internet services which are normally offered free of charge in spite of OSIS license costs. As one such player, we justify offering DQ for free by cross subsidising the search fees from other elements of

our service. The business case for this is marginal. Any changes which drive up costs will lead us to re-consider the merits of this business case. The demise of free internet DQ services will be a significant negative for consumers who carry out more searches on internet services than they do on voice services.

Question 3.3

We believe that printed directories are outdated, environmentally unfriendly, and go unused by the majority of the population that now favour such alternatives as the internet. We believe that it is right to remove obligations that oblige publication and distribution of printed directories.

Question 3.4

We believe that the DQ market is relatively robust but that this robustness is founded on the existing regulatory framework and the availability of OSIS to all providers on “**fair, objective, cost orientated and non discriminatory grounds**”. It allows relatively small companies to thrive even though their only realistic source of data is their largest competitor, BT. We believe that the removal of this regulatory framework would introduce inequity, uncertainty and would make the industry vulnerable to the actions of BT. Sustained and long term investment by DQ providers will be much less likely in this environment.

Question 3.5

We have no comment

Section 4

Question 4.1 and 4.2

We are very concerned that the current proposals for who has rights of access to GC19 data may not include companies (like ourselves) who offer internet directory services; CD ROM directories; and teleappending services. It is obviously essential that this is clarified to include these directory types.

Question 4.3

We believe this proposal, though inherently logical, has a significant practical flaw in that it would dramatically expand the number of Communications Providers to whom one would have to go to obtain a comprehensive dataset. This will be impractical, costly and disproportionately inefficient. We are not convinced that there is a real problem with the existing provisions of GC19 in this regard although provision does need to be made for non-geographic and VOIP numbers to be provided under GC19.

Question 4.4

We agree

Question 4.5

We agree but we also consider that VOIP numbers should be included.

Question 4.6

We agree that GC19 needs to be modified so that the end user name and address is provided. However we strongly believe that GC19 needs to contain the same complex record structure as

provided in OSIS as this is critical in allowing a user to find the right department in large businesses. These complex records are typically created at the request of the end user and it is how the end user wishes their record to be displayed in directory services.

Question 4.7

The current data structure of GC19 is not sufficient for DQ purposes. In order to maintain DQ services of their existing quality based upon GC19 data then the following fields would be required as a minimum to be included within GC19:

Complex Record Structure and Grouping allowing companies to define the structure of their business so users can easily find the right telephone for the right department.

Directory Classifications allowing DQ providers to use the data appropriately and consumers to easily end their search by being able to confirm the person they are looking for is Ex Directory

Business and Residential Flags allowing users to clearly differentiate between business and residential records, this is also critical for business classified services.

Unique record ID is critical to allow accurate updating and deleting of information by DIPS.

The Type of Line i.e. fax, freephone, mobile etc is important for making sure the consumer gets the number they are looking for.

Question 4.8

We have no comment

Question 4.9

We do not agree to the "Opt In" approach. Even those people that want to be listed in a directory are unlikely to "Opt In" since it requires effort and there is no particular imperative. On the other hand, the high levels of XD for landline numbers show that those users that do not want to be listed will go to the effort of Opting Out. Had the phone book ever relied upon people opting in, it would never have become anything like a comprehensive directory.

We also believe that consumers would react positively to new DQ classifications designed for mobile users eg. a half way house DQ category might be one which allows a DQ provider to text the mobile user advising the details of someone that is trying to reach them. We would urge Ofcom and BT to look at defining such categories.

We therefore believe that, provided mobile users are clearly advised of the option to opt out, they should be included by default in directories. We would urge Ofcom to go further and require that the mobile companies carry out a one off exercise with their existing customers to advise them that they will be included in directories from a certain date unless they opt out. We believe that the ICO would support such an approach.

Question 4.10

We have serious reservations around the principles set out in Clause 4.57. Not all personal data that a DIP might wish to add to a service requires the end users consent under data protection law. There are numerous sources of personal data which can be published as a matter of law without additional end-user consent (eg. database of company directors or the edited electoral roll). Services such as ours offer information such as this combined with DQ information in response to a single end user search. We do so in strict compliance with data protection requirements and with the explicit approval of the ICO.

We propose therefore that instead of requiring that DIPs ensure that the inclusion of this data in a directory DQ service is done *“with the approval of the person concerned”*, it should rather be done *“in compliance with data protection regulations”*. In other words, if data protection regulations require the DIP to obtain end user consent, then it must do so, but if such consent is not required then there would be no obligation for the DIP to obtain it.

Question 4.11

We agree

Question 4.12

We have no comment

Question 4.13

We have no comment

Question 4.14

We agree

Question 4.15

We have a number of comments:

- What is the definition of *“a publicly available telephone directory”*? Does this include an internet DQ service or a CD ROM? One might think so until you look at the definition of a Directory which refers to a *“printed or electronic document”* and does not seem to encompass Internet or CD ROM services. Obviously, there is no reason for these types of services to be excluded and to avoid confusion it would be better if they were specifically included within the definitions.
- What is a *“format”*? Is this referring to the technical characteristics of how the data is delivered, the data fields that are included, the method by which data shall be made available or the minimum frequency of update? We believe that Ofcom must take this opportunity to define all of these things if GC19 is to have any practical validity.
- The definition of GC19 data seems to exclude DQ classification which is essential to running DQ services.
- We have heard mixed messages as to whether XD records will form part of GC19. Without XD records, the quality of DQ services in the market will decline significantly leaving the consumer confused as to whether the number is Ex Directory or whether, if they try another service, they might still find it.
- The following additional fields would be required within GC19 for any DQ service of the quality of existing services to be provided. There is a significant danger that, if these fields are outside GC19, the communications providers - not least BT if left unregulated - will seek to commercially exploit the data pushing costs up to the detriment of consumers.

Complex Record Structure and Grouping allowing companies to define the structure of their business so users can easily find the right telephone for the right department.

Directory Classifications allowing DQ providers to use the data appropriately and consumers to easily end their search by being able to confirm the person they are looking for is Ex Directory

Business and Residential Flags allowing users to clearly differentiate between business and residential records, this is also critical for business classified services.

Unique record ID is critical to allow accurate updating and deleting of information by DIPS.

The Type of Line i.e. fax, freephone, mobile etc is important for making sure the consumer gets the number they are looking for.

- We believe that the large number of communications providers requires that Ofcom should not only mandate the format of GC19 (see above) but also establish a proforma contract under which communications providers license data and a standard maximum price that the communications provider must charge. This contract should include a provision that the licensees of GC19 comply with the data protection act but should not be prescriptive (in the way that BT has tried to be prescriptive) as to what this means. The ICO should be the arbiter of data protection.

Section 5

Question 5.1

It should not be taken for granted that BT will have sufficient commercial incentive to maintain comprehensiveness of OSIS. Indeed, OSIS is not currently comprehensive as it is missing the vast majority of mobile numbers and non-geographic and VOIP numbers.

BT's commercial incentive will change if the cost of data from upstream providers changes or if its own priorities with respect to the provision of directory services change. The provision of OSIS and / or directories is not a core part of BT's business and will naturally be given a lower priority than more strategic parts of its business.

Even if BT has an incentive to maintain a comprehensive directory for itself, it is in competition with the rest of the industry and will have a natural incentive to provide a less comprehensive database to its competitors. Any lack of comprehensiveness in DQ services generally will have a detrimental effect on DQ services to the consumer.

As set out elsewhere in our response, we do not think that a realistic alternative to OSIS exists or is likely to be created due to economic and practical constraints. A comprehensive OSIS is therefore vital to the continued availability of high quality DQ services. We therefore strongly believe that:

- BT must continue to be obligated through regulation or voluntary contractual undertakings to maintain a comprehensive database and to make that available to third parties on ***“fair, objective, cost orientated and non discriminatory grounds”***;

Question 5.2

For us, this is the most important question of the entire consultation. We are horrified at the idea, should the revocation of USC7 be confirmed, that a replacement regulatory regime may not be established:

1. A few short years ago Ofcom de-regulated the directory enquiries market. A significant number of companies entered the market and have invested many millions of Pounds

over the subsequent years. A fundamental premise of all these companies in deciding to invest in the market was that OSIS would be available to them under the protection of USC7. Many of these companies would otherwise not have entered the market knowing that the only database available to them, and the terms under which it was available to them, was controlled by their most significant competitor, BT. We believe that Ofcom risks a public relations disaster should it now allow that fundamental plank of de-regulation to fall away. This will be exacerbated by the fact that it is Ofcom (through Oftel) that failed to implement USC7 correctly.

2. GC19 does not provide a practical nor economic alternative to OSIS for DQ providers for the following reasons:
 - A DQ provider would have to negotiate contracts, and maintain relationships with, a large number of communication providers. Even if this were just 100 companies, it would be a huge and unmanageable task.
 - The cost of obtaining data from each communications provider is likely to be around £25,000 per year as each CP uses the charge set for BT as a benchmark for what it may charge. Even if there were just 100 Communication Providers, the minimum annual license cost for a DQ provider would be £2,500,000
 - It would be a hugely challenging and costly for the DQ provider to set up a system to receive data from each of the communications providers and it would be virtually impossible to maintain a comprehensive and daily updated database due to the technical, logistical and contractual difficulties. British Telecom itself invested many millions of Pounds in trying to set up such a system (the OSIS Replacement System) and failed due to the technical complexities. It should also be noted that the industry (and therefore the consumer) have already paid at least £20-30 Million in sourcing OSIS data from communications providers let alone the cost of systems to support OSIS. It would be ludicrous for this investment to be duplicated.
3. For the same reasons stated in 2 above, it is highly unlikely that a third party would step forward to provide an alternative centralised database or, if it did, it would take years of investment to overcome the practical difficulties.
4. For the reasons stated in 2 and 3, the industry will continue to be reliant on OSIS going forward.
5. BT competes with the industry at almost all levels of DQ provision: book; voice; and internet. Under USC7 BT has/had an obligation to offer OSIS to the industry on **“fair, objective, cost orientated and non discriminatory grounds”**. The requirement that BT treats its internal licensees on the same basis as all other licensees has worked well to date. Even within this regime BT has a track record of heavy handed behaviour towards licensees. We fear that in an un-regulated environment the equitable balance between monopoly licensor and its licensees would be lost. We believe that BT would impose licensing terms which have hitherto been unacceptable to the industry, that it would exploit the situation to its own commercial advantage and that it would take a heavy handed approach to policing the license.

We refer Ofcom to the failed license negotiations as evidence of BT's heavy handed behaviour. In June 2003 BT gave notice of termination of the existing license and stated its intention to negotiate a revised license with the industry. Negotiations took place over a 2 year period during which time the industry and BT were at loggerheads on a number of key issues. Agreement could not be reached. On a number of occasions BT threatened to impose the license against the wishes of the entire industry. It was only because of the KPN ruling that BT held off on introducing new license terms. In an un-regulated environment they would simply have imposed their terms. The list of long

standing disagreements between BT and the industry is large. Here are some of the more important ones:

- BT objects to the use of Ex Directory data on internet DQ services (citing data protection concerns) even though the ICO has no objections. In taking this stance we believe that BT is probably both in breach of USC7 (if it stands) and of competition law.
- BT objects to the use of Ex Directory data in a number of B2B products from a number of different suppliers even though it previously approved the products through the PEP process.
- BT recently tried to ban use of OSIS in ID verification products. After aggressive posturing to the industry it seems to have backed off for now but we fear they will return to this issue in a de-regulated environment.
- BT tried to impose “end user terms” in the aforementioned license negotiations preventing a record sourced from OSIS being used more than once by a customer without further royalty payment. The industry objected wholeheartedly to this. BT has effectively imposed it through the issue of a mandatory Guideline to the existing agreement
- Definition of approximate address. BT has long wanted to impose a very restrictive definition of how address data can be searched citing data protection reasons, even though the ICO is comfortable with the existing situation. BT’s proposed approach would seriously reduce the effectiveness of DQ services for consumers.

The license negotiations have been in abeyance pending the outcome of the recent complaints to Ofcom but BT has openly stated that it will return to its agenda once those disputes and this consultation are ended.

We also fear that in an unregulated environment BT will take a heavy handed approach to policing the license. Its existing approach when it considers that there has been a breach of license by a licensee can be characterised as aggressive but it normally falls short of the ultimate sanction of terminating a license and depriving a DQ provider of its life blood. Very often, things that BT claims are license breaches are in reality not breaches at all and centre around disagreement over how and for what purpose data should be used or around interpretation of data protection law. License termination would not be an appropriate response by BT to many of these disagreements but we fear that they would use that sanction in order to get their way.

6. The only recourse for licensees in an un-regulated regime would be to the Competition Tribunal. This is long winded, expensive and may be too late to save a business that has been deprived of its life blood of data by BT. It is simply an inadequate remedy for licensees that are licensing data from a dominant competitor.

Question 5.3

One of the constant sources of friction between BT and the OSIS licensees is the overly restrictive nature of the license and the policing of that license by BT:

- Instead of setting a broad framework within which licensees can operate BT operates a very rigid product approval regime requiring the detail of all products to be pre-approved by them (PEP process).
- Instead of requiring licensees to adhere to the data protection act and leaving it to the ICO to police infringements, BT continually sets out its own interpretation of data protection issues, often in direct contradiction of ICO advice.

- BT consistently refuses to allow Ex Directory data to be used in Internet products citing data protection reasons even though the ICO has categorically advised that there would be no problem with such use.
- BT is supposed to offer OSIS on cost orientated terms. It has long been a frustration of the industry that BT has been unwilling to share with the industry the detailed calculations of the cost of OSIS and the license royalties. If OSIS were being offered on truly cost orientated terms one might expect the license royalties to change from one year to the next in response to changes in the cost base or volume use of the data. In actuality, the license royalties have not changed in at least six years suggesting that the cost base and the royalties are not closely linked. We would urge Ofcom to require that BT publish the detailed cost information to licensees and to justify the royalties that it charges.
- Given the lack of any practical alternative to OSIS as a comprehensive, centralised database, we believe that OSIS must be treated as an important national resource which BT maintains on behalf of the industry. A similar database is the national address database (Postal Address File) which is maintained and licensed by the Royal Mail. Following a recent review of the ownership and management of PAF, Postcomm put in place a regime which we believe provides a very suitable model for Ofcom to follow:
 1. Royal Mail must maintain PAF and make it available to any person who requests it on reasonable charge
 2. Royal Mail must not impose terms and conditions other than reasonable restrictions to:
 - a. Ensure intellectual property rights are protected;
 - b. PAF is utilised in such a way as to encourage good addressing
 - c. Reasonable charges are paid
 3. Royal Mail was required to set up an advisory board of key stakeholders such as licensees and consumer groups to work with Royal Mail to ensure that the broader interests surrounding PAF are preserved.
 4. Royal Mail must provide public clarity in financial reporting of PAF. This entails publication of an annual P&L.
 5. Royal Mail is allowed to recover reasonable costs plus a margin of 8-10%
 6. Royal Mail must pay for its use of PAF on terms similar to those of other PAF users.
 7. Royal Mail must ring fence PAF from its other operations and must offer PAF to third parties on similar terms to those on which Royal Mail users of PAF receive the data.

We believe that many of these principles have been established through the voluntary agreement of Royal Mail. We strongly urge Ofcom to take a close look at Postcomm's work in this area and to seek to establish a similar regime. This should also include provisions that BT:

- should make all data (including Ex directory) to all types of DQ provider;
- the only restriction that BT should be allowed to make on use of the data is to stipulate that the data is used only for the provision of information products and services and not for marketing purposes;
- that no pre-approval of products by BT is required;

- that BT does not act as judge and jury on data protection matters related to the use of the data.

The Postcomm report outlining the PAF regime can be found at:

<http://www.psc.gov.uk/policy-and-consultations/consultations/postcode-address-file--management-of-information.html>

Summary of our main views

We suggest the following way forward:

1. If USC7 is proven unlawful and is revoked, Ofcom must step in to ensure that an alternative regulatory framework is set up to protect the competitiveness and stability of the industry. Alternatively Ofcom should obtain relevant contractual undertakings from BT that it will continue to offer OSIS on: **“fair, objective, cost orientated and non discriminatory grounds”**;
2. Ofcom should extend the scope of GC19 to include all fields that are necessary for DQ services of the same quality that are offered today;
3. BT should be obliged to maintain OSIS to include all the fields of the enhanced GC19;
4. OSIS would therefore become a centrally aggregated GC19 database;
5. BT would be obliged to provide the OSIS database to DQ providers on cost orientated terms;
6. Ofcom should insist that mobile providers supply mobile data (including Ex Directory) in the enhanced GC19 format to OSIS;
7. Ofcom should ensure that all mobile providers to:
 - a. conduct a one off exercise to include their existing customers in directories and providing them with an opportunity to opt out;
 - b. put processes in place for all new mobile customers to advise that they will be placed in directories unless they opt out.
8. Ofcom should consult on alternative DQ classifications that make use of mobile phone technology;
9. Ofcom should ensure that in its licensing contract BT only goes so far as:
 - a. Ensuring that intellectual property rights are protected in so far as BT has rights;
 - b. Prohibits use of DQ data for direct marketing purposes but does not otherwise restrict use of the data in information products and services. In particular, that it does not seek to restrict use of Ex Directory data in internet services;
 - c. Requires compliance of licensees with the data protection legislation but does not seek to be prescriptive as to what that means, leaving data protection issues to the judgement of the ICO;
 - d. Sets down the charges payable;
 - e. Does not include a product approval process
10. Ofcom requires BT to operate OSIS as a ring fenced division of BT and:

- a. Provide transparency of the OSIS cost structure to industry;
- b. To establish an advisory board of stakeholders to look after the broader interests of the industry and consumers;

We would welcome the opportunity to be involved in any face to face consultations that Ofcom may instigate on the back of this consultation.