



Response to Ofcom review of telephone directory information obligations and regulations

on behalf of Orange Personal Communications Services Ltd

June 30 2008



Summary

Orange's response to this consultation covers issues affecting us as both a Communications Provider and a Directory Information Provider.

Orange believes that it is appropriate for Ofcom to review the current situation, and ensure that any new obligations and regulations are both practicable and proportionate.

To this end, Orange would advocate a number of the proposals put forward by Ofcom, such as the removal of the obligation that all communications providers should provide printed directories to subscribers. The removal of this obligation reflects not only what is already happening in practice, but also aids compliance with the General Conditions.

Orange would welcome an updating of General Condition 19 so that responsibility for the provision of information would rest with the current controller of the telephone number rather than the current impractical situation whereby responsibility rests with the original number range holder.

Orange furthermore appreciates the clarity as set forward in Ofcom's assessment of the responsibilities of Communications Providers as regards Data Protection Act requirements. However, Orange has a number of concerns over the proposed obligation to extend the provision of information to cover the end user of a number, where it is not the same as the subscriber. Compliance with such an obligation would pose great difficulties on a practical level, as well as raising issues vis a vis our ability to respect the requirements set out in the Privacy Regulations.

We have outlined below our views, and for the most part agree with and support the assessment made by Ofcom. We however remain unconvinced on the merits and desirability of pursuing the requirement to supply information to cover an end user of a number, where this is not the subscriber.

Introduction

Orange welcomes Ofcom's review of the General Conditions governing the telephone directory information market and its proposals to amend and clarify both obligations and regulations. Orange anticipates a greater level of clarity for communications providers and suppliers of directory enquiry services alike in the market going forward, and to this end is strongly supportive of those proposals set forward that are expected to provide enhanced legal certainty.



Orange operates its own directory information provision service providing all listed UK residential and business fixed numbers via calls made to 118000, and international numbers via calls made to 118 880. Numbers are given verbally, sent by text message, and callers are able to directly connect to the number. Orange additionally offers an SMS service, available both within the UK and whilst abroad. Users are able to send by text the name and country of the business or service requested, with an SMS response for all listed UK and limited European residential and business numbers.

Orange customers are able to request that their number appear in the BT Directory by calling our customer service team.

Orange believes that a well functioning system for directory information requests is of great importance for the telecommunications industry, as consumers are able to easily reach individuals and businesses. We further appreciate the value that consumers themselves place on directories and directory information services.

Specific Questions

Question 3.1: Do you agree with Ofcom's proposed revocation of USC7? If you disagree, what are your reasons for this view?

We accept Ofcom's assessment that USC7 is unlawful and therefore should be revoked. We note that the effect of revocation is that BT would no longer be required to maintain a database directory. We are concerned by the implications of the removal of those obligations, but we accept Ofcom's assessment in the remainder of the consultation that BT should have sufficient commercial incentive to maintain its current directory.

Question 3.2: Ofcom considers that the current directory services meet the criteria of comprehensiveness, affordability, quality and availability. Do you agree with this assessment? If not please provide a detailed response as to which criteria is not fulfilled and in what way.

Orange accepts Ofcom's assessment that the current directory services meet the criteria of comprehensiveness, affordability, quality and availability.

Question 3.3: Do you agree with Ofcom's analysis [on the removal of the obligations to provide a printed directory]? If you do not agree please provide your reasons.

Orange is in agreement with Ofcom's proposal to remove the requirement that Communications Providers provide printed directories. The removal of this requirement reflects what is already happening in practice, with the BT Phone Book and KCOM satisfying the obligation for a printed directory. Removing the burden of this obligation will make compliance with GC 8 easier for Communications Providers.

It is also worth noting that as mobile operators are being incentivised (by Ofcom's proposed changes to GC 19) to move towards a system whereby customers actively have to opt-in to being included in directories, the quantity of customers who will choose to do is likely to be very small. As a result, any paper directory containing only the directory information of those Orange customers is likely to be very limited and of little real value.

Question 3.4: Ofcom considers that the DQ market is robust and delivering the level of service required by the Universal Service Directive. It also considers that it is appropriate to maintain the condition on Communications Providers to ensure access to a DQ service to ensure that the universality of provision is maintained. If you do not agree please provide your reasons.

Orange is happy to continue to provide access to DQ services to our customers and cannot envisage circumstances in which we would choose not to do so, not least because we offer our own DQ service. However, whilst in practice we do not regard this particular regulatory requirement as overly burdensome, in principle we do not believe that Ofcom should impose regulation where market forces and commercial incentives can be relied upon to deliver the same outcome.

In this case, Ofcom appears to accept that sufficient commercial incentives exist and therefore we do not believe that the imposition of a specific regulatory requirement is warranted.

Question 3.5: Do you agree with the redrafting of GC8 set out above [at the end of Section 3]? If you do not agree please provide your reasons.

Subject to the relatively minor reservations outlined above, Orange is content with and welcomes Ofcom's proposed re-drafting of GC 8.

Question 4.1: Do you agree with Ofcom's view that GC19 should be modified so as to clarify persons having 'rights of access' as set out above (a redrafted version of condition GC19 and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

Question 4.2: Do you have any other comments about 'rights of access'?

Orange is concerned that the proposed amendments to GC 19 will allow directory information to be requested by intermediate suppliers who do not themselves provide directories or DQ services to end-users. We believe this is clearly an extension to the current version of GC 19, which appears to permit directory information to be requested only by those who will themselves provide such directories or DQ services.

We are concerned by that extension and whilst we note Ofcom's view that this "*is unlikely to lead to a substantial increase in information requests to individual Communications Providers ...*" it is impossible to predict at this stage what the practical impact will be. Even if Ofcom only regards the change as a "*clarification*" the result might be to encourage numerous other suppliers to request this information, with the consequent resource impact.

In addition, there are practical considerations as to how Communications Providers can determine whether or not the request for directory information does meet the requirements of amended GC 19. The nature of an "*intermediate supplier*" is such that it may well be difficult to determine exactly what its business is and how it will use the information it obtains and in particular whether it will be limited to the purposes of providing directories and DQ services. If there is any doubt, it is likely that the Communications Provider will refuse to provide the information.

Orange hopes that Ofcom's reasoning is correct and that DQ providers would continue to approach BT should OSIS remain the consolidated database of directory information. However, although the practical impact might not be great, Orange therefore disagrees with the proposed redrafting of this part of GC 19.

Question 4.3: Do you agree with Ofcom's view that GC19 should be modified so that responsibility for the provision of information rests with the Communications Provider controlling the telephone number (a proposed redrafting of GC19 incorporating this change is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

Orange would strongly welcome this modification since it would represent a logical step, especially as regards the increase in number portability and the unnecessary complexity of maintaining the status quo.

The existence of number portability means that it is practically impossible for a Communications Provider to maintain up to date directory information for a subscriber who is no longer its customer. This is partly because a subscriber would not think to contact a previous provider in order to update his details and partly because even if he did, the provider will have no means of retaining information on subscribers who are no longer its customers. Similarly, the ex-customer subscriber would not be able to change his 'consent status' with a previous provider who no longer retained any of his customer data, if for example he wanted to opt out of having his details contained in the directory.

Question 4.4: Do you agree with Ofcom's view that GC19 should be modified so as to capture actual end-users of the relevant telephone numbers assigned by the relevant Communications Provider to its subscribers, where these users are not the same persons as the subscribers themselves (a proposed redrafting of the definition of directory information is set out at the end of this section)? If you disagree, please provide detailed reasons for this view.

We strongly disagree with Ofcom's view that GC 19 should be modified so as to capture actual end-users of the telephone numbers. Whilst Orange recognises the logic behind this proposed modification, both the practical and legal (data protection) problems that arise, far outweigh any perceived benefits.

Orange is extremely concerned at the impracticalities of this requirement. In the case of our post-paid customers, the contract entered into is between Orange PCS and the mobile phone subscriber. We would therefore foresee major difficulties in providing information on and verifying a third party user of the number. We would also not be able to obtain the end-user's consent for the disclosure of his or her personal data to the DQ provider and/or to disclose their personal data to customers who use the DQ service. This is an absolutely fundamental flaw in Ofcom's proposals which does not appear to have been addressed, let alone resolved.

It would be very unreasonable for the Communications Provider to rely on the subscriber to give consent on the end-user's behalf. The disclosure of that information by the subscriber could also lead to other serious concerns, where for example the end-user is a minor. In such situations it would clearly be highly undesirable for end-user directory information to be made available, particularly if there is any doubt about whether the end-user has actively given consent.



It would be equally unreasonable for the Communications Provider to rely on the subscriber to inform the end-user that his or her personal data has been included within a directory and is therefore publicly available. It would be also unreasonable to rely on subscribers to inform the Communications Provider that the end-user wishes to withhold information or opt out at the time of collection of data or at any time after.

In the instance of pre-paid customers, this requirement would be entirely impracticable as there is no requirement for the registration of PAYG customers and therefore identifying actual end users (who are a further stage removed) would be further complicated if not wholly unworkable.

Not only would gathering the information prove problematic, but deciding who to include and also monitoring any changes would pose additional challenges and place a huge administrative burden on Communications Providers.

Finally, there is the very practical issue that our customer service systems are not designed to retain two sets of data for the same number, namely that of a subscriber and an end-user. Although this may appear to be a minor issue, in order to overcome this problem would require substantial (and extremely costly) redevelopment of those systems to enable us to capture two sets of data. Even aside from the public policy and data protection concerns outlined above, we do not believe could be considered reasonable or proportionate to the objective which Ofcom is trying to achieve.

Question 4.5: Do you consider that Ofcom should consider modifying GC19 (and related definitions, such as 'Directory Information') to include non-geographic telephone numbers assigned for use in public Electronic Communications Service (including, but not limited to, PATS)(a proposed redrafting of the condition and definition is set out at the end of this section)? If you disagree, please provide detailed reasons for this view. Or if you disagree in part only (e.g. a reference to public Electronic Communications Service being too wide), how do you suggest that Ofcom should address this matter?

Although Orange is in principle happy to provide directory information for non-geographic numbers, we remain unconvinced that there is any desire from consumers to have information such as broadband only VOIP numbers to be included in directory information. Nor would Orange be able to do this for existing customers given that we do not have the relevant consents.

Question 4.6: Do you consider that Ofcom should modify GC19 (and related definitions, such as 'Directory Information') such that:

- ***end-user name and address are also required to be provided; and***

- ***business and non-geographic numbers to replace geographic information in the end-user address with more relevant data that would allow the identification of the number by a third party (a proposed redrafting of the condition and related definitions is set out at the end of this section)?***

If you disagree, please provide detailed reasons for this view. Or if you disagree in part, how do you suggest that Ofcom should address this matter?

As previously stated, Orange does not support mandating the supplying of end-user information, being an entirely unworkable requirement on Communications Providers, and of little benefit to consumers where it might unduly stretch the provisions of the Data Protection Act and Privacy Regulations. Requiring that a subscriber should go on to provide information such as name and address of the end-user is liable to raise unintended data protection infractions.

Ofcom has identified Article 12 of the Privacy Directive which requires that subscribers are given the opportunity to determine whether their personal data are included in a public directory, and to verify, correct or withdraw such data. Logically this right must also extend to include end-users, should it be their information which is being captured, but it's unclear how this would work in practice and what impact that this would have on Communications Providers and DIPs.

Question 4.7: Do you consider that there is a requirement for a wider mandated set of information beyond subscriber and end-user name and address under GC19? If so, what additional information do you think should be made available under GC19 – please provide reasons and any evidence to support why you consider that users regard such additional information as necessary to find the persons they are looking for by indicating what specific circumstances exist in the UK?

Orange strongly believes that the current system – whereby additional information can be provided that enables the DIPS to offer a better service to the consumer – is appropriate and that it would be entirely inappropriate for Ofcom to require further data to be provided. Ofcom is obviously very well aware that good regulatory practice dictates that it should only intervene to impose additional regulation where there is a clear need to do so and in this instance there is no such need and no consumer detriment arises from additional information not be mandated. It is not Ofcom's role to promote the commercial business models of directory providers.

Question 4.8: Do you agree with our assessment of Communications Providers responsibilities with respect to the provision of GC19 data? If not, please provide details of your objection to this assessment and your proposed alternative.

Orange agrees for the most part with the assessment put forward by Ofcom on the Communications Provider's responsibilities, but remains concerned by the reference to end user



information: (4.47 “Any end-user information provided to the Communications Provider thus will need to be confirmed by the subscriber”). Orange believes that whilst this approach is appropriate for the subscribers – given that the relationship is developed and managed between Communication Provider and subscriber – its extension to cover end users is not a logical consequence.

The same comments as under question 4.4. apply. It would be unreasonable for the Communications Provider to request and rely on the subscriber to confirm any end-user's information. The Communications Provider could also potentially be in breach of the Data Protection Act (e.g. data protection principle 4) if that information is incorrect (because under the proposal the end-user would become a data subject under the Act).

We strongly believe that end-user data should not be captured by the Communications Provider and/or processed by the Communications Provider.

Question 4.9: Do you agree that it is appropriate for the Opt-in approach to assume that not opting-in is equivalent to selecting an unlisted option? If not, please provide your reasons and your proposed alternative.

Orange very strongly agrees with this proposed amendment (to the wording, but not to the policy) to GC 19. We very much welcome the clarity that Ofcom provides through this interpretation of what not opting-in to directory inclusion would mean as concerns data protection purposes, and would support this position.

Ofcom will be aware that this has recently become somewhat of a contentious issue. Mobile operators in particular have had difficulty in understanding exactly what are the requirements of GC 19 as currently drafted. This has created practical problems in knowing what data must be provided to what parties, for what purposes and with what data protection restrictions.

Orange anticipates that some directory providers may oppose this change, but we believe that it clearly accords with the reality of what customers will assume to be the case when they do not opt-in.

We would therefore strongly urge Ofcom to maintain this position in its final version of GC 19. If Ofcom were to change its position, it would leave Communications Providers in general (and mobile operators in particular) in a continuing state of uncertainty as to the exact nature of their regulatory obligations.

Question 4.10: Do you consider whether there are any issues arising in respect of the DIPs collection of additional data? If so, please provide details of any such concerns.

The same comments as under question 4.4. apply.

We also wish to draw attention to the third data protection principle under the Data Protection Act which provides that “*Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.*”. It is therefore important that any data collected is adequate, relevant and not excessive for the purpose of providing a DQ service.

Question 4.11: Do you agree that there is no requirement for specific additional protection of end-user information? If not, please provide details of your objection to this assessment and any proposed alternative.

Orange strongly disagrees with Ofcom's view that there is no requirement for specific additional protection of end-user information. In particular, we disagree that a “*low risk*” is a sufficient test in circumstances where public access to personal data is at stake. In addition, there appears to be no compelling reason for the position which Ofcom has adopted.

Given that it is the Communications Provider with whom responsibility for the protection and distribution of subscriber information rests, and the relationship is between Communications Provider and subscriber, Orange would be extremely uncomfortable to extend this responsibility to end users where there is no relationship.

Furthermore we believe it would be inappropriate to rely on Ofcom's assumption that it would be in the interest of the subscriber to protect the end-user's interest, and disagree that there is a low risk that end-user data will not have adequate protection through the subscriber relationship. Whilst this might generally be the case, Orange does not believe it is best practice to assume that a subscriber would perform in the best interest of data protection legislation. We therefore believe that it would be inappropriate to extend the information requirement to include end users.

Question 4.12: Do you have any comments about the operation of the requirements in Privacy Regulation 18(3) and 18(5)? We would also be interested to hear your views on whether Privacy Regulation 18(5) is sufficient to protect end-user data.

We think that it would be impossible for the Communications Provider to specifically inform end-users about directory facilities and to gain their express consent to allow the information to be made available on this basis (and to rely on the subscriber for transparency and consent).

We also think that the Communications Provider should not rely on the subscriber to verify, correct or withdraw end-user data at any time and the Communications Provider would potentially be in breach of the Data Protection Act, as explained above.

Question 4.13: Do you have any comments about the operation of the requirement in Privacy Regulation 18(4) as it applies to GC19?

In relation to corporate subscribers, the default position could be opt-in unless they opt out.

Question 4.14: Do you agree that GC19 should be modified so as to refer also to the word "objective" in the context of the terms on which GC19 data should be provided (a proposed redrafting of the condition and related definitions is set out at the end of this section)? If you disagree, please provide detailed reasons for maintaining this view.

Orange has no objections to this modification.

Question 4.15: Do you agree with the proposed redrafting of GC19 and related definitions as set out above [at the end of Section 4] and discussed through that section? If you disagree, please provide detailed reasons for this view.

Orange disagrees with those parts of the proposed amendment to GC19 which we have highlighted above, for reasons discussed.

We are most concerned about the requirement to collect end-user data (where it is different from the subscriber) for reasons of practicality, public policy and data protection

Question 5.1: Do you consider that BT will have sufficient commercial incentive to maintain the comprehensiveness of OSIS? Or do you consider that Ofcom should consider additional regulation to ensure that it will remain comprehensive?

Question 5.2: Do you consider that there is no need for further regulation on the maintenance and management of BT's OSIS database and it is sufficient to rely on



existing market incentives on BT and the option of drawing on ex post competition powers when competition issues are raised? Or do you consider that regulated access to BT's OSIS database is necessary in order to achieve Ofcom's policy objective? Or do you think that there are other options that Ofcom should consider? Please state your reasons.

Question 5.3: do you have any other comments on assessments made or the matters affecting the issues discussed in this Section concerning access to a UK central database?

We note Ofcom's analysis of BT's commercial incentive to maintain a comprehensive OSIS database. However, it is not clear to what extent this analysis is based on discussions with BT, or if it is simply Ofcom's own view. In addition, Ofcom's conclusion that BT has a sufficient incentive to maintain OSIS, rather conveniently fits with its earlier view that the requirements of USC 7 must be revoked. Any conclusion that BT does not have a sufficient incentive, would cause Ofcom some difficulty.

Orange cannot comment on BT's commercial incentives, but we are not convinced by Ofcom's argument that BT has a sufficient incentive. We believe that the question for Ofcom to consider should not simply be whether OSIS is profitable, but rather whether it is sufficiently profitable for BT to justify the continued effort and resource in maintaining it, when compared to all of BT's other priorities, which are likely to be more core to its business.

However, we would also note that the availability of a comprehensive database is more of a public policy matter for Ofcom, than a commercial concern to Orange, but we believe that Ofcom should consider the possibility of additional regulation on BT if it is concerned by the public policy advantages of such a database.. We do not believe that the evidence demonstrates that BT will necessarily have sufficient incentives, but it may be appropriate for Ofcom to keep the matter under review, rather than taking action at this time.