

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

Questions

Section 3

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

- UKChanges notes that The Number is currently appealing Ofcom's finding on the lawfulness of Universal Service Condition 7 ("USC7"). We assume that USC7 will remain in force until the outcome of the appeal is known.
- Whether or not USC7 is ultimately found to be unlawful, UKChanges feels strongly that 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.
- In our view, regulatory underpinning equivalent to that provided to date by USC7 is the only realistic way to secure the continued functioning of the UK DQ industry.
- DQ providers have built their businesses and systems around the existence of OSIS and made the necessary investment to enter the deregulated DQ market created by Ofcom in 2002 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, while not ideal, 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.
- UKChanges feels that, having precipitated deregulation of the DQ market in 2002 in the guise of Oftel, Ofcom should now act to ensure that the necessary regulatory framework remains in place for the resulting industry to retain its access to the necessary directory information it requires in order to provide comprehensive DQ services.

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.

- 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 (including Skype and equivalent) numbers, UKChanges strongly disagrees that current directory services meet the criteria of comprehensiveness.
- UKChanges feels that the above trend is likely to continue as technology develops further and the market matures – for example, the emergence of mobile broadband will increasingly mean that subscribers will not require a land line in order to access broadband services – as most currently do. If more subscribers adopt the mobile-only approach then, unless more mobile numbers are made available, a decreasing proportion of the UK population

will be accessible via DQ services. This is a major issue for the industry for which UKChanges feels a solution should be sought now.

- One solution would be for General Condition 8 ("GC8") to be amended to require fixed, mobile and VoIP operators to provide subscribers with a directory listing, after giving them full information about the listing options available.
- 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).

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.

We have no comments on this question.

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.

- UKChanges agrees with Ofcom that the DQ market is robust, however for this to continue requires either USC7 or equivalent regulation to be in place in order to ensure the ongoing provision of the necessary directory data information from OSIS at a wholesale level to DQ service providers.
- UKChanges feels that DQ service levels and performance would be improved for the consumer and other DQ users if mobile and VoIP data was included in OSIS and also if Communications Providers ceased encouraging their subscribers to sign up as ex-directory by default.
- 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, limiting consumer choice and reducing the value and efficiency of directory services.

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.

- General Condition 8 ("GC8") could also be beneficially amended to require fixed and mobile operators and VoIP service providers to provide subscribers with a directory listing, after giving them full information about the listing options available.

Section 4

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.

- Notwithstanding that GC19 is totally inadequate as a standalone regulatory mechanism for the DQ industry, UKChanges agrees with Ofcom that modifications should be made in order to clarify the rights of access for intermediate suppliers and aggregators of directory information at the wholesale level under GC19.

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

- 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 substantially unrestricted in their use of that data for the provision of DQ information products and services.
- 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.
- UKChanges would also like to remind Ofcom of the difficulties OSIS licensees experienced when BT tried to impose new licence terms several years ago. Industry concerns is that, in the absence of a suitable regulatory framework, BT would simply impose terms of supply on the industry, however unfair these may be.
- We are aware that several DIPs have already requested directory information – for example, from BT and from Kingston Communications, however they have met with obstructive responses – often passed off as technical difficulties – and, to date, no data has been provided.

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.

- UKChanges would be concerned that, in a scenario where individual DIPs had to acquire data directly from Communications Providers, this might entail them dealing with several thousand organisations which would clearly be extremely difficult logistically, legally (because each would have their own terms of supply) and cost-wise. However, if Ofcom can provide a suitable framework for ensuring that OSIS continues to be the industry source of DQ data, this issue disappears.

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.

(Please see response to 4.5 below)

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?

Response to questions 4.4 and 4.5:

- 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.

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?

- UKChanges would agree with this, however prior consultation with industry is required in order to agree content and format of the replacement information and ensure its usefulness, consistency and accuracy across the industry.

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?

- 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.
- 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).

Grouping

- 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.
- 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.
- Grouping data should therefore be included in GC19 and the drafting of the revised GC19 amended accordingly.

Other Data

- OSIS data is provided to DIPs in a very raw and unstructured form and significant processing is required before the data can be used to provide a DQ service, for which certain data is required. 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 on business data) 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.

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.

- If the option for Communications Providers to withhold subscriber information from DIPs is implemented, UKChanges feels that this should be limited to certain specific cases (such as celebrities or other VIPs) and caveats should be included so that this does not become a loophole which might enable Communications Providers to withhold data unfairly, in ways which might create competitive advantage for them over the DIPs or degrade the value of the DQ service offered by the DIP.
- UKChanges feels that ex-directory name and address records should be provided to tele-appender DIPs so that an "XD" flag can be appended to a client record.

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.

- UKChanges feels that details of subscribers should 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)).
- Many Telcos try to list their subscribers as ex-directory by default – whilst we appreciate the importance of complying with subscribers' wishes, we feel that this is unnecessary and has a negative impact on the comprehensiveness of DQ services generally.

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.

We have no comments on this question.

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.

To UKChanges' knowledge, the level of complaints arising from DQ services has been low and therefore we agree with Ofcom's view that there is no requirement for additional protective measures.

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.

- Regarding 18(3), UKChanges does not provide such services and does not feel that "reverse searching" is appropriate for consumer data. The requirement to seek express consent prior to providing such a service would almost certainly be cost-prohibitive.
- Regarding 18(5), UKChanges feels that such changes and corrections are best made at source by the Communications providers and filtered down to the DIPs. However where the DIP has added additional data it is reasonable to impose such a condition on them.
- With regard to the above comment, UKChanges feels that 18(5) is sufficient to protect consumer data.

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 order for 18(4) to operate efficiently with regard to all types of organisations, it is vital for DIPs to be able to differentiate between corporate and non-corporate subscribers – for example, consumer, SoHo (small, home-based businesses), partnerships, limited companies, plcs, clubs, charities, etc and a suitable flag should be included in the definition of GC19. For example, how would an entry for "Childline" be treated? The current "business" / "residential" flag provided on OSIS was originally a line tariff flag and is not a reliable indicator of the nature of a business for this purpose.

Question 4.14: Do you agree that GC19 should be modified so as to referring 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.

We have no comments on this question.

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.

Please see our responses above – especially in 4.7.

Section 5

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?

- Although BT may currently argue otherwise, UKChanges feels 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.
- Given that BT itself competes with DQ providers to provide DQ services, then, in the absence of USC7 or an equivalent regulatory framework, there is an incentive for 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.

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.

- 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 to act arbitrarily, for example 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.
- 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, especially in comparison to BT's vast financial and legal resources and we suspect that Ofcom would also struggle to cope with the volume of cases and disputes which are likely to result.

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?

- If BT were to discontinue supply of DQ data to DIPs via OSIS, it would require huge investment and years of effort for any third party to try to replace OSIS with an equivalent database, always assuming that a third party could be found to do this. BT's recent failed OSIS Replacement System

provides a very relevant illustration of the complexities and expense involved.

- GC19, as presently written, would be totally inadequate for replicating OSIS because many additional data fields are required.
- 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. At the very least, this process would be phenomenally expensive, with many duplicated costs which would ultimately need to be passed on the consumer.
- UKChanges feels that any proposed alternatives to OSIS (i.e. either a) a central industry database or b) individual DIPs creating their own databases would be extremely costly, largely impractical (because of the need to deal with so many Communications Providers) and ultimately disadvantageous to the consumer and therefore Ofcom must act to retain an appropriate regulatory framework to support continued provision of DQ data to DIPs from OSIS on fair, objective, non-discriminatory and cost-oriented terms.

Additional comments

- None