

Telephone Directory Information Obligations and Regulations

Consultation on a proposal to remove and/or amend universal service obligations and general conditions relating to the provision of telephone directory information

UKCTA Response

Submitted to Ofcom: 30th June 2008

UKCTA is a trade association promoting the interests of competitive fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at www.ukcta.com.

Introduction

UKCTA members recognise that the provision and availability of subscriber information, in an appropriate form, is crucial to ensuring the continued availability of directory products and services. We also recognise that the supply of such information must necessarily be governed by the Privacy Directive and other such data protection legislation. In the context of these requirements, we support Ofcom's general policy objectives as set out in the consultation, however we do not believe the reforms to the regulatory environment that Ofcom is proposing will realise these objectives. Accordingly, we urge Ofcom to reconsider its plans for regulations applying to the provision and supply of directory information.

Fundamental to UKCTA's position in this matter is the belief that in order to maintain a directory information provision and supply regime that is fair and equitable for all stakeholders, and ultimately to ensure the continued delivery of directory products and services, a central UK database, underpinned by the appropriate regulations, needs to be maintained.

Further, we do not believe that absent of such a regulatory underpinning, the proposed reliance on ex post competition powers and commercial incentives is a satisfactory or appropriate remedy.

We set out our reasoning for this position below.

Provision and Availability of Data

We note that in resolving the recent dispute between BT and The Number/Conduit¹, Ofcom found Universal Service Condition 7 to be unlawful. UKCTA has not taken specific legal advice on that finding, however regardless of the lawfulness, or otherwise, of the Condition, we believe that the absence of such a regulatory underpinning would introduce a significant threat of instability to the directory information arena.

Should USC7 be revoked, and fail to be replaced by an equivalent mandated obligation, BT would be at liberty to alter the terms and conditions upon which OSIS is made available, to change its function/scope, or even to cease the facility, should it so choose. Contrary to Ofcom's expectations, UKCTA remains unconvinced that OSIS would prevail in its current form or that its contents would remain available under the existing terms & conditions. Indeed we believe that there is a significant risk that the facility could be withdrawn in its entirety, particularly if the commercial incentive to perpetuate its provision is weak.

The OSIS database represents the culmination of many years of data compilation and evolution – as such, in a scenario of OSIS withdrawal, we do not believe that a successor aggregated UK database would emerge, given the up-front investment and significant development and implementation resource that would be required. The alternative approach of Directory Information Providers (DiPs) obtaining subscriber information directly from source would, in our opinion, be inefficient and impractical for all stakeholders concerned. By way of example, in order to ensure that their services were comprehensive, DiPs would need to establish supply arrangements with a large number of 'upstream' data providers. The contractual, commercial and operational overheads that such an approach would generate would be extremely onerous for all parties concerned.

¹*Final Determination to resolve price disputes concerning supply of certain directory information by British Telecommunications plc to The Number (UK) Ltd and Conduit Enterprises Ltd,*

While we accept that concerns have been raised around certain specific aspects of the commercial/contractual and operational conditions that apply to OSIS, we believe that the existing mandated, central database model and its over-riding principles represent a logical and appropriate model for the UK directories regime.

Alternative Remedies

As highlighted above, UKCTA does not regard the proposed reliance on ex-post competition powers to be an appropriate alternative remedy to USC7 or an equivalent regulatory underpinning. Should anti-competitive behaviour occur (or a suspicion of its existence be held) it is likely that any resulting competitive harm will have taken irrevocable effect by the time that a Competition Complaint had been heard/resolved, thus potentially rendering such a remedy superfluous. Furthermore, we would suggest that establishing such a filing with the competition authorities in the first place would require significant financial commitment – of a level that is likely to be beyond the means of many of the stakeholders with interests in this market place. We therefore urge Ofcom to maintain ex-ante regulatory remedies in this area.

Scope of GC19 Data

UKCTA notes that Ofcom has proposed that certain additional data be included within what is defined as the General Condition 19 data set, thus broadening its scope. We do not believe that the inclusion of this additional data is appropriate or justified. Further, we do not believe that there is a requirement or demand for such additional data to be provided. In particular, the proposed inclusion of non-geographic numbers and the suggested replacement of address details with 'more relevant data' in the case of business and non-geographic entries, causes us significant concern.

In our opinion, the mandated inclusion of non-geographic numbers, and the replacement of address details with 'more relevant information' would place an unfair

and costly burden on upstream data providers – particularly in relation to the capture and compilation of such information from their subscribers. In addition, we believe that the existence of comprehensive and well established classified directories, and the availability of a wide range of additional promotional/advisory material related to services that are provided by non-geographic numbers, renders a mandated obligation to include non-geographic numbers/‘more relevant data’ within the scope of GC19 superfluous. We regard this data as representing additional value, over and above what we believe should be the basic scope of GC19. As such, we believe that it would be both reasonable and appropriate for upstream providers to recover the costs of collecting/compiling that additional data from persons requesting it.

Of additional concern is the question of how the obligations around publicising the corresponding call charges for certain non-geographic numbers (as required by the PhonepayPlus Code of Practice) would be satisfied, should these numbers ultimately be featured in directories. We note that in the recent consultation relating to the extension of PhonepayPlus’ remit to cover 087 numbers, it was stated that this point could be addressed via the inclusion of pricing information at the front of a directory. However, this relies on the providers of such directories including such information and keeping it up to date (and it is unlikely, for example, that any such pricing information would ever be truly comprehensive).

Further, we remain concerned about the potential retrospective application of this proposal. It is not clear if Communications Providers would be expected to contact all of their existing customers to whom non-geographic numbers have been allocated to establish whether they wish them to feature in directory products & services. By the same token, we are not certain if Ofcom intends for CPs to contact all of their business customers to ascertain whether they require information other than their geographical location to appear in the address field. Such requirements would be unduly burdensome – and in all likelihood impossible to satisfy.

Notwithstanding our discord with the proposals, we also believe that the term ‘more relevant data’ is ambiguous. Without a clear definition of this term, it is likely that an

inconsistent data set would materialise which would serve only to confuse rather than assist enquiries.

For the reasons set out above, we believe the proposal to extend the scope of data subject to CGC19 obligations to be disproportionate and unnecessary. We do not agree that this additional requirement will lead to higher quality directory information or result in an enhancement to its reliability, compared to what is already widely available – and recognised – in the public domain.

Summary

In summary, UKCTA does not agree with a number of the principal proposals that Ofcom has made in this consultation. In particular, regardless of the legal standing of the existing regulations, we believe that to ensure that the UK directory information regime continues to function in a manner equitable for all stakeholders, the provision of a central, aggregated UK database should continue to be underpinned by an appropriate regulatory remedy. Further, we believe that Ofcom's proposals to broaden the scope of data to which the GC19 obligations should apply are both inappropriate and unnecessary. We therefore urge Ofcom to reconsider the proposals that it has made in respect of the regulations applying to the directory information regime.

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