

Draft Annual Plan 2008/09

T-Mobile welcomes the opportunity to respond to Ofcom's consultation, Draft Annual Plan 2008/09

Executive Summary

T-Mobile believes that Ofcom's major efforts in the coming year should be addressed towards withdrawing from regulation wherever possible and towards pursuing more efficient regulation where appropriate. We hope to see effective action taken in this direction in the next year. If Ofcom truly wants to act with a bias against intervention and wants to minimise the regulatory burden on communication operators, it should always make sure that either competition law or self regulation are not appropriate before introducing regulation. We would also appreciate more in-depth impact assessment analyses and cost-benefit estimates.

Unlike earlier years this Draft Annual Plan contains scant detail which makes it difficult for T-Mobile to evaluate exactly what is included and when the work is intended to be done. We would request more information as stakeholders need to plan to the same extent as Ofcom.

- T-Mobile welcomes the Business Connectivity Market Review that Ofcom has started. It is essential that when Ofcom sets the price control for BT for the backhaul circuits, they include a price for subsequent circuits that can be provided at a fraction of the cost of the initial circuit;
- Ofcom need to ensure that the mobile sector assessment it will carry out this year does not place an undue administrative burden on the mobile operators who are in the midst of dealing with a number of cumbersome regulatory projects already this year;
- T-Mobile considers it imperative that Ofcom's haste in dealing with the Digital Dividend does not leave the UK at odds with any non-mandatory harmonised approach across Europe;
- Ofcom should initiate a review of its numbering policy. There have been problems with the definition of a mobile number in recent years and Ofcom needs to undertake this review prior to beginning its mobile sector assessment;
- T-Mobile is dismayed that at a time when Ofcom is proposing to reduce regulation in the mobile sector, it has initiated new cumbersome compliance procedures for the call termination charge controls;
- Ofcom needs to ensure that its consultation procedures allow stakeholders sufficient time for responding to all the relevant points. The consultation period should not be shortened and the amount of information should not be extended: neither option allowing for sufficient stakeholder response;

- T-Mobile hopes that Ofcom engages with the European Commission's review on the framework directive and keeps the mobile operators informed of what it is doing with this regard.

1. What are your views on the continued relevance of Ofcom's three-year strategic framework for its work in 2008/09?

T-Mobile feels that the three-year strategic framework is still relevant for Ofcom. However together with how Ofcom's work fits it to this 'big picture', Ofcom still needs to provide within this annual plan sufficient detail as to what work is planned for the coming year.

2. What are your views on Ofcom's proposed policy work programme and top priority areas for 2008/09?

Promoting competition in the leased line market which will include completing our leased line market review

T-Mobile welcomes the Business Connectivity Market Review that Ofcom have initiated. T-Mobile hopes that Ofcom notes the importance of completing this market review imminently in order to facilitate the continued development of this growing area of importance for the mobile industry. One area that Ofcom have not considered in the market review is whether the price controls on BT for RBS Backhaul should give allowance for the fact that following the term of the initial circuit the extension of a contract should be significantly lower priced commensurate with BT having recovered their investment costs. As a result subsequent circuits should be priced at less than 5% of the cost of the first circuit as the operating costs to run additional capacity is miniscule. In order for this review to be effective, this needs to be taken into account.

Developing Ofcom's Approach to mobile

T-Mobile supports Ofcom's intention to assess their overall approach to regulation of the mobile sector and their understanding that the sector is facing significant change and could benefit from the reduction of any inappropriate regulation. We had hoped that this would be dealt with in the Telecoms Strategic Review. However T-Mobile is concerned that in order to develop this approach, Ofcom will place a large administrative burden on the mobile sector at a time when they will be stretched to capacity already. Over the coming year, the mobile operators will be dealing with appeals to the Competition Appeal Tribunal, a Competition Commission inquiry, spectrum auctions, imminent regulation on migration of customers, mobile number portability changes and the implementation of the new EU Telecoms Framework, to name just a few relevant areas. It is imperative that Ofcom ensures that any information requests and time given for consultation responses with regards to this inquiry are reasonable and give due consideration to the other administrative burdens already in place in the sector.

Engaging in development of new EU legislation

Whilst T-Mobile agrees with Ofcom's general principle of 'driving forward a market-based approach to spectrum' it considers it essential that Ofcom takes cognisance of work in the ECC and EU and ensures that the DDR spectrum is packaged in a way to allow a non mandatory harmonised approach across the EU.

The UK is in an advantageous position with regards to the DDR spectrum in that Ofcom is one of the first regulators considering how to allocate this spectrum. However Ofcom needs to ensure that the spectrum is packaged in such a way which can be used cost effectively for mobile communications. This would mean that paired spectrum is allowed and the lots correspond with the size of current mobile spectrum lots (5MHz) as opposed to the planned 8MHz chunks.

Given the ongoing European developments regarding the DDR spectrum, T-Mobile is very concerned that Ofcom's DDR timetable will be too early to take into account the results of the work taking place at a European level. In particular for the upper cleared spectrum (Channels 63 – 68) and the Interleaved spectrum (Channels 61-62), the benefits to the UK will be considerably greater if a harmonised approach can be agreed across Europe.

T-Mobile would urge that Ofcom undertake due caution when consulting on the final auction design and packaging of lots to ensure that the UK does not get left out from any subsequent harmonised approach. A great deal of international work is on-going in defining non-binding harmonisation measures including channelling arrangements to allow access of this band for mobile broadband. If decisions are made too early, then there is a risk that the UK will be disadvantaged with respect to other countries which wait for a non-binding harmonisation measures. In this regard we believe that it is critical that Ofcom continues to play an active part in the EU-wide approach to the digital dividend.

Releasing spectrum to enable new services

T-Mobile has a comment on Ofcom's recent administrative policy towards spectrum. In recent times, Ofcom has carried over an extremely high amount of work regarding spectrum which has resulted in a significant use of resources for respondents. In addition, more consultations and auctions are expected in 2008. We ask Ofcom to consider the phasing of these consultations so that operators are not required to respond to several major spectrum consultations/data requests at the same time.

3. Are there new or additional areas in which Ofcom should consider reducing regulation and work to minimise administrative burdens? Please provide specific examples.

T-Mobile is somewhat dismayed that whilst Ofcom is envisaging starting a major project on developing its approach to mobile a long overdue review of numbering policy as relates to mobile is still not on Ofcom's agenda. Ofcom has acknowledged over the last 2 years that there are problems with the definition of what is a "mobile" number, which has led to arbitrage and consumer detriment. Mobile numbers have also been given to players whose businesses are demonstrably not mobile. This has led to problems in consumers being able to identify the services being provided behind numbers and in other areas including call termination and mobile number portability. It would urge early focus on such issues. Numbering policy may not be as headline catching an area as others under Ofcom's remit but its piecemeal approach to regulation in this area, as indicated by u-turns in policy relating to the 070 pre-call announcement project and consequently the stalling of the 0870 project, are readily apparent. Ofcom must ensure that it has completed a review of numbering policy and the various sub-projects that flow from that (including further developments within NTS) before attempting to start the mobile sector assessment.

T-Mobile is also surprised that at the time when Ofcom is aiming to reduce regulation in the mobile sector, it has initiated new cumbersome compliance procedures for call termination. In T-Mobile's response to this specific consultation, we noted that Ofcom has failed to establish any basis on which the current system of charge control compliance requires amendment, let alone the significant and extensive changes proposed.

T-Mobile does not consider that Ofcom has provided any evidence to justify operators being required to publish an auditor report which contains time of day traffic information. This is not required to assure compliance and is therefore disproportionate. In any case, the time of day traffic profile is commercially sensitive information, and T-Mobile objects strongly to this being published.

T-Mobile believes that Ofcom has misunderstood the definition of a transparency obligation. Transparency is a legislative and general administrative duty on Ofcom on the manner in which it conducts itself. It is a duty owed to the public and regulatees, and not visa versa absent any specific provision to the contrary. In this context, the duty of transparency requires that there is transparency in Ofcom's enforcement of charge control regulation. This transparency does not mean that Ofcom needs to empower citizens and consumers to verify the operator's compliance with the Call Termination charge controls

Another area that T-Mobile is concerned with is Ofcom's tendency in recent years to rush through consultations or provide too much detail to respond to in one consultation period. The consultation period for "monitoring compliance with charge controls" was only six weeks and Ofcom was working on its later stages for this project during this period, indicating that it did not give enough consideration to the responses to the consultation. In the "spectrum usage rights" consultation, T-Mobile felt that too much material was being covered and could not be responded to within the short timeframe given. In circumstances like this, it would be prudent on Ofcom to issue separate consultations on

different aspects of the project and to allow respondents ample time to formulate responses.

4. Are there additional areas of international policy development that Ofcom should be contributing to? Please provide specific examples.

T-Mobile feels that it is essential that Ofcom engages in the current Framework Review and it is important that they do so and also that they input into the UK discussion which is being headed by BERR. As well as participating, Ofcom has a duty to inform its stakeholders of what they are doing. T-Mobile has complained in the past that sufficient notice was not given of Ofcom's international briefings and in one case we weren't invited along. Given the subject matter, it is essential that Ofcom involves the mobile operators in this process.