



13 April 2006

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Dear Claudio

Consultation re Ofcom's Consumer Policy

Thank you for the opportunity to comment on this Consultation. Here is BABT's formal response. We see Ofcom's Consumer Policy as being absolutely central to the way that Ofcom discharges its "Principal Duty" under 3(1) of the Communications Act 2003.

Ofcom have recently conducted a Consultation entitled "Review of the Metering and Billing Approval Scheme", and this Scheme is referred to in the present Consultation Document in a number of places¹. As we have recently responded to the M&B Consultation and this contains comment on Consumer Protection matters, we would respectfully direct your attention to that response, a copy of which is appended for convenience.

We also note that virtually all of the other responses to the Metering and Billing Consultation expressed strong support for the retention of that Scheme, with Consumer Protection forming a key part of their reasoning in most cases. Coupled with this is the identified need for Ofcom to review the use of the Numbering Scheme², in order that Consumers can have restored confidence in the charging for calls as it is related to the digits dialled. Furthermore, within the last year Ofcom has found it necessary to act to control mis-selling activities, particularly "Slamming". All of these point to the centrality of Consumer Protection in Ofcom's *raison d'être*.

In addition to the information in our response to the Metering & Billing Consultation, we would like to offer the following in answer to the questions in the present Consultation Document:

Question 1: Do you agree with the proposed distinction between citizen and consumer interests?

No. The distinction made seems a little academic. The common English usage of the term "Consumer Protection" embraces what you have defined as "Citizen related policy".

¹ Sections 1.20, 2.15, (4.11), and 4.29 - GC11 of the Consultation Document.

² "Telephone Numbering" <http://www.ofcom.org.uk/consult/condocs/numberingreview/>

Question 2: Do you agree with Ofcom's position on vulnerable consumers?

Only in part. Those listed by Ofcom are certainly "Vulnerable Consumers", but with the exceptional complexity of Tariff Offerings, and the ignorance of most members of the General Public regarding the true meaning of some tariff options³, it should not be assumed that all other persons are "Non-vulnerable"⁴.

Question 3: Do you agree with the proposed high level objectives for consumer policy?

We have concerns about the high level objectives. The "overall aim" as stated includes "working together with the Industry" which implies that Consumer Policy could be influenced by precisely those parties who have a vested interest in parting the Consumer from his cash. This seems at best to be rather inappropriate. Impartiality and Transparency are crucial attributes of a Regulator, and sadly the European Commission currently has concerns at the possibility in 'some countries' that "National Regulatory Authorities" may yet be influenced by the entities they are required to regulate - See Annexe 1.

Question 4: Do you agree that the proposed indicators provide an appropriate basis for monitoring consumer interests? Are there any other indicators which should be used?

Not on their own. "Historical Indicators" will not protect. They may or may not reveal when harm has actually occurred, which is rather too late. Monitoring Consumers' Interests should be extended to include the operation of Schemes such as the Metering & Billing Scheme and relevant Codes of Practice which exist to demonstrate that the Consumers' interests are being looked after. Ofcom should make it more generally known whether or not Communications Providers (CPs) hold an independently assessed Approval Certificate for the accuracy of their bills. This particularly needs to include those providers who have chosen not to participate in the Scheme at all, as well as those who have applied, but not yet achieved the required Standard. At least the latter group of CPs are making efforts in an appropriate direction.

Question 5: Do you agree that Ofcom should publish an Annual Report on the Consumer Interest?

An Annual Report could be of value, if it has a sufficiently broad remit.

Questions 6-12

No comments

³ An example would be a cheap rate per minute coupled with a high minimum charge per call, when the public are mainly ignorant of the fact that a high percentage of calls are of relatively short duration, making such an apparently attractive offer to be punitive in practice.

⁴ Another example of a "vulnerable person" would be the residential customer whose account number happens to resemble that of a major corporate customer, placing him at "above average risk" of misallocated usage appearing on his bill when data corruption or human error occurs.

Question 13: Which of the options on comparative price information, if any, do you favour? Are there other options Ofcom should consider?

Question 14: What is your opinion about the ideas for generating awareness of price comparison information?

There is some value in each of the options. However, the present requirements of the Metering and Billing Scheme and Condition 10 to put Tariff Information “in the Public Domain” whilst a valuable starting point, need to be taken further and fully policed. The desired result is that CLEAR Tariff information is readily accessible to all consumers and potential consumers. The consumer is then in a position to start to make informed choices using other information as appropriate. This view is supported by your section 5.92, where a significant minority have “no or unclear information”. In our experience, Tariffs are too often described by users as “impenetrable”, when the CP concerned believes he has complied with Condition 10 and the current requirements of the Metering and Billing Scheme. Notes hidden on unlinked and deeply buried internet pages are theoretically “in the Public Domain”, but are very unlikely to be found by consumers.

Question 15: Do you agree with our proposed approach regarding the Quality of Service initiatives?

Your document notes that there is increasing public interest in Quality of Service information for Internet and Mobile services⁵, and that this extends to Accuracy of Billing as well as Coverage. There does not currently seem to be a definitive plan to provide adequate information regarding Internet Services⁶, “data” currently being excluded from the TopComm initiative.

The “Mobile Quality of Service” initiative in the past has not provided any information as to the accuracy of bills. The Scheme appears to need some significant supervision and updating as part of re-launch, and to include more measures than are currently required. Your document states⁷ that “It is not always clear to the consumer whether a claim has been independently verified”. This is a significant problem, and Ofcom should take two actions to remove it:

- Require CPs to publish on their bills whether the accuracy of their billing has been subject to independent verification under the Metering & Billing Accuracy Scheme;

- Ensure truly independent verification of the data produced under the Mobile Quality of Service and the TopComm QoS Initiatives. At present, the TopComm audit process is flawed because CPs are permitted to use Internal Auditors, controlled by the Board of the CP, who may in practice not be allowed full visibility of all factors affecting accuracy. Furthermore, the focus of auditing onto “Sampling” of event data, whilst not taking adequate account of the other key figures input into the calculations leaves room for undetected errors, and even the risk of manipulation of figures in a way that would be likely to escape detection.

⁵ Sections 5.64 and 5.65 of the Consultation Document.

⁶ Section 5.79 of the Consultation Document.

⁷ Section 5.70 of the Consultation Document.

Question 16: Do you agree with our proposed approach regarding switching processes?

We feel a little surprised that Ofcom should have “a bias against intervention”⁸ in regard to the approach to consumers switching suppliers. It has recently been necessary to intervene to deal with mis-selling, silent calls from Tele-selling agencies - including CPs, and concerning the use of “non-Geographic Numbers” in several contexts. This suggests that unless Ofcom show ‘a bias towards intervention’, consumer detriment is likely to occur by default. The evidence you mention would appear already to be there.

We hope this response will be of use to you.

Yours sincerely

Paul Ebling
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⁸ Section 5.101 of the Consultation Document.

Extract from:

**EUROPEAN ELECTRONIC COMMUNICATIONS REGULATION AND MARKETS 2005
(11TH REPORT)**

NRA independence

Independence of the NRA from commercial interests is in general ensured, although concerns remain in Cyprus, Slovakia and Slovenia as regards separation of ownership and regulatory functions, and this issue has re-appeared in Belgium. It is important that NRAs should be unencumbered in their day-to-day decision-making so as to be able to exercise their powers impartially and transparently. Questions in regard to NRA impartiality remain open in a small number of countries, and the Commission is examining these carefully.