

Ofcom's Consumer Policy

Cable & Wireless response to Ofcom consultation

19th April 2006



CABLE & WIRELESS

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1 Introduction

Cable & Wireless welcomes the opportunity to comment on this consultation document. We are generally supportive of Ofcom's position on Consumer Policy but there are a couple of key areas where we would like to raise specific issues.

As a general point, it is vital that any regulation imposed on Service Providers is fair and that the burden of regulation is indeed borne by those companies that do not abide by the regulations. An example of where care needs to be taken is the ADR process. Whilst it is clearly important that the ADR process is easily accessible, the schemes should not be such that they actually motivate people to use ADR or that pressure is put on ADR providers to achieve a quota of awards against Service Providers. Where "awards against Service Providers" is the measure used to monitor effectiveness, it could be argued there is an incentive on the ADR providers to actually find against Service Providers.

One of the areas Cable & Wireless believes requires further consideration is Quality of Service (QoS). The fact that this scheme has such a prominent role in the Consumer Policy consultation reinforces our belief that the QoS scheme is not addressing the requirements of operators (like ourselves) that primarily or solely serve large businesses. We would encourage Ofcom to address this anomaly in its review of the scheme later this year.

A further concern that affects all operators is that QoS currently compares different services as if they were like-for-like (ie CPS, WLR and LLU). This may reflect the end-user's experience of the service, but we believe this could be detrimental to infrastructure providers if not accompanied by a minimum level of information on the differences between the underlying wholesale products. We discuss this in more detail in our answer to question 15 below.

We also believe care needs to be taken when considering why customers do not switch suppliers. We will of course be commenting more on migration in our response to the separate consultation document on this issue, but it is by no means certain that poor consumer empowerment is the key reason behind the low level of switching. There are other factors which could be influencing the decision.

With regard to the provision of comparable information on Service Providers, Cable & Wireless believes there is nothing intrinsically wrong with the current PASS scheme but that it does require a review and re-launch, for reasons we discuss in more detail in our answer to question 13. We also believe it is important that it includes broadband and mobile.

Our response to the specific questions are given in section 2 below.

2 Responses to Ofcom's Questions

General:

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

The first part of Chapter three of Ofcom's document describes Ofcom's views on the difference between citizens and consumers. Cable & Wireless believe that whilst Ofcom's analysis may work in a legal sense, it does not follow standard micro-economic thinking.

Ofcom distinguishes between consumers and citizens in the following manner:

- Consumers are single market participants with 'an interest in a range of things, including access to a wide range of goods and services, a choice of supplier, price, quality of service and value for money'.
- Citizens are viewed as having a 'shared, collective interest in a range of issues which are 'beyond the market' but which also have a major influence on our lives'.

Cable & Wireless believe that in reality the range of things that influence people's behaviour cannot be divided between the 'market' and 'wider issues'. First this does not recognise the well known concept of externalities. Ideally, all the costs involved in producing a good or service will be reflected in the price of that product or service. Consumers therefore make a full decision on how much to purchase based on that 'true' price. However, in reality prices are often not 'correct' due to externalities – these are costs which are not included in the price of the good or service but which should be (as they are driven by the provision of that good or service). For instance, Ofcom gives an example where citizen and consumer interests may be in conflict – namely 'our interest as consumers in automobiles may conflict with our interest as citizens in efforts to combat global warming'. However, in reality in the case of car travel, the impact of the car in driving the costs of global warming (loss of beautiful habitats, flooding etc) is not fully included in the cost of the automobile either directly on its purchase or when consumers are purchasing petrol/diesel to actually use the car itself. Hence, consumers are facing incorrect prices for these services and as such purchase the incorrect amounts.

Secondly, Ofcom's distinction does not cope with the fact that consumers often buy goods and services in a manner which reflects what Ofcom would view as their 'wider citizen interests'. For instance, consumers are increasingly purchasing 'fair trade' produce which guarantees suppliers fair prices for their goods and service. These goods and services may well be more expensive than their non-fair trade counterparts. Clearly, customers take into account a wide variety of factors when making purchasing decisions and, in this case, for some customers the outcome of balancing preferences such as price, taste, helping the third world etc results in them purchasing the fair trade goods despite them being more expensive.

Cable & Wireless also do not agree with some of Ofcom's analysis in relation to citizen interests 'shaping the market' (see paragraph 3.12). Whilst we agree that overall social welfare concerns and government action can alter the way markets work, we do not believe that the example given analyses this process correctly.

Ofcom suggest that replacing publicly administered health care provision involves introducing 'a market for health care services'. We assume that publicly administered health care provision refers to public funding and public provision of health care services whilst introduction of a 'market' could mean public funding but private provision and consumer choice between these private providers. Ofcom seem to assume that allowing consumers to choose their (private) Service Provider rather than having the government choose that provider means that a new market has been created. Arguably the market for health care services was always there, it was just supplied by a single government provider (with no choice allowed to the patients) instead of numerous private suppliers. Just because a market is monopolised or publicly supplied does not mean that it is not a market per se. Similarly, we are not altogether sure that the government's actions would in this case lead to new consumer interests – surely the basic interests of consumers in the quality of care and other aspects of health care, do not necessarily change who ever provides it? What we would agree with is that allowing consumers to exercise choice is likely to encourage the market to better meet those needs and as such, it is possible that economic welfare could increase.

In contrast, however, we agree that where the local programming example is concerned, Ofcom is correct that the requirements to purchase these services create market opportunities for providers who might otherwise not be able to enter the market or engage the interest of the large broadcasters.

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

Cable & Wireless agrees that vulnerable customers warrant special consideration and specific customer policy initiatives should be employed where necessary. However, Ofcom assumes that vulnerable users are less empowered because they might not have access to certain information (e.g. older people might not use the internet). Whilst this is undoubtedly true, it should not be presumed that the failure to take action i.e. the low rate of switching primarily stems from this low empowerment. Vulnerable consumers may be less inclined to switch due to other considerations, such as low perceived benefits (e.g. where expenditure on a service is already low, the perceived percentage saving is likely to be correspondingly low) or because factors such as certainty of the service are more important than price (i.e. "better the devil you know").

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

In general we agree with the high level objectives. However, regarding ADR schemes, although we agree with Ofcom that it is necessary to ensure they are easily accessible, it is important this should not extend to motivating consumers to use ADR or to put pressure on ADR providers to achieve a quota of awards against Service Providers. An example is last year's Ofcom review of ADR which measured Otelo v CISAS numbers of cases decided against Service Providers. It could be argued that this measurement actually gives the ADR providers an incentive to find against Service Providers.

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?

The majority of indicators do provide an appropriate basis for monitoring consumer interests. However, the complaints indicator measuring the “number of complaints received by Ofcom” should include a clear definition of a complaint which excludes things such as customer equipment faults. Ofcom does not differentiate these and they are therefore unfairly attributed to the Service Providers.

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

Cable & Wireless welcomes the publishing of an Annual Report on the Consumer Interest.

Consumer Protection:

Question 6: Do you agree with the characteristics identified of effective consumer protection?

We agree with the characteristics identified.

Question 7: Do you agree with the assessment and priorities for rights and regulations?

Yes, we would agree with the assessment and priorities for rights and regulations.

Question 8: Do you agree with the assessment and priorities regarding consumers’ awareness?

Yes, we would agree with the assessment and priorities regarding customer awareness.

Question 9: Do you agree with the assessment and priorities regarding complaints handling and redress?

With regard to this issue we make the point that ADR providers should be expected to have due regard to the scope of the services provided by the supplier as well as its terms and conditions. We (via Bulldog) have recently complained to the Dispute Resolution Service – Chartered Institute of Arbitrators over a decision where the CISAS Adjudicator awarded the amount claimed but where the claimant had produced very little to substantiate his claim and without the adjudicator (in our view) looking into the means used to calculate the loss allegedly suffered by the complainant – the adjudicator simply believed the claimant’s version of events. Our concern in this and other cases is that a claimant sees that they can claim up to £5,000 through the ADR scheme, so they put in an inflated claim of this amount or near to it. This then often appears to become the starting point for any award of compensation – in another recent case, a claimant put in a claim for £3,000 and admitted he had no evidence to prove this amount of loss; he was subsequently awarded compensation of £1,500, exactly half of his original claim.

The final appeal arbitrator in our case concluded that review process under the CISA Scheme is flawed because other than an appeal to the High Court on a point of law, there is nothing that can be done to “produce any effective redress to a justified complaint” by an ISP. The recommendation on our appeal was that: “the wording of the complaint procedure under the CISA Scheme be reviewed in order to provide an effective remedy for a respondent in cases of plain unfairness”; at the moment there is no redress for companies such as Bulldog, if an adjudicator awards excessive amounts or makes unreasonable recommendations. We would hope that Ofcom will support the findings of the Dispute Resolution Service – Chartered Institute of Arbitrators.

Also in relation to consumer satisfaction surveys on ADR, Ofcom needs to be mindful that these will depend on the outcome of the decision. In other words, failure to pass judgement in favour of the customer will be unlikely to lead to positive feedback on the ADR scheme, even if the ADR processed the claim in a fair manner and as per the ADR rules. Again we would argue this is an incentive for ADR providers to decide in favour of consumers as a matter of principle, which is clearly not the original intention of these schemes. Rather, there should be an objective, transparent process for measuring the effective handling of complaints.

Question 10: Do you agree with the assessment and priorities regarding monitoring and enforcement?

Cable & Wireless is supportive of Ofcom’s position regarding monitoring and enforcement.

Consumer Empowerment:

Question 11: Do you agree with Ofcom’s approach to the provision of consumer information?

Yes we agree with Ofcom’s approach to the provision of consumer information.

Question 12: Do you agree with Ofcom’s conclusion on consumer awareness of suppliers and services?

Cable & Wireless agrees that consumers need to be aware of what choices are available to them before they are able to exercise a choice. The conclusions of the research results on comparative awareness of alternative suppliers in the different markets is logical. However, it may not only be the perceived lower product differentiation on fixed line calls that results in a lower awareness for these calls compared with mobile and broadband – but also potentially a perception of lower savings on fixed line calls because of the lower cost of calls in this market. This demonstrates the inter-relatedness of Ofcom’s ‘elements of empowerment’ and that it is difficult to assess awareness of alternative suppliers in isolation from access to comparative information.

We agree that the emergence of new suppliers and services especially in the fixed calls market is likely to increase consumer awareness. However, this is as likely to be driven by convergence and the increased need for consumers to be aware of and understand

suppliers of bundled services – as Ofcom identifies in the section on access to comparative information.

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

Of the options discussed, option 3 – “Retain, review and re-launch the scheme” - would be the preferred option. In principle we support the scheme and agree it should be beneficial for consumers although current awareness levels suggest this is far from the case at present. However, the success of any re-launch by Ofcom will only work if there is adequate publicity and we do not believe this cost should be borne by the operators. If an independent third party is involved we believe they should bear the publicity costs etc. Consideration should also be given to expanding the scheme to cover broadband and mobile, given the convergence of these markets and also the emergence of bundling propositions.

Regarding option 1 – “Withdraw the PASS scheme” - this would be our second preference. The scheme has very low consumer awareness, only 8% from Ofcom's own figures and has only been awarded on a single occasion to USwitch. We believe the recent press coverage questions the validity of awarding the distinction to USwitch or any other company that demands commission for referrals. In order to maintain consumer trust Ofcom needs to ensure that the accreditation is not open to the accusation that the provider has a vested interest in promoting any single company.

We do not believe that option 2 – “Maintain the scheme as it stands” is viable. The scheme clearly isn't working (see option 1 comments above) and has now received additional bad press that will tarnish it further in the eyes of consumers and operators alike.

Option 4 – “Establish closer links with a single price comparison provider”. Our concern here, aside from increased price, has to be the lack of flexibility. If an operator for any reason has a poor relationship with the provider of the comparison scheme there is the risk that they will receive less prominence and would only have limited avenues of recourse. It would seem perverse to perpetrate the idea of a monopoly provider in one market in order to drive competition in another.

We believe there is one further option not considered in the consultation document. This is to include the pricing information within the TopComm scheme and then to give an equivalent to the PASS accreditation to the co-regulatory site. This option has been mentioned by Ofcom and consumer representatives in the TopComm forum in the past and although there was little appetite for the suggestion at the time, we find its omission now somewhat surprising. We believe that pricing information could be included as additional information and not be subject to the comparability audit.

Having said that, whilst we can see the benefits of having quality of service and price information on one site, we believe it would prove difficult to provide in a meaningful form for business customers where there is a proliferation of bespoke tariffs and any price comparison scheme should only be considered for the residential sector.

On balance we believe it is more appropriate to review and re-launch the existing scheme, provided it is seen to deliver a cost effective solution to consumer need.

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

An annual report on price comparisons (partly funded by Ofcom) and increased use of free media would seem sensible for price comparisons in the residential market. As we state in our response to question 13 above, we do not feel it is appropriate for pricing information on large business customers to be made available in this way.

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

Cable & Wireless does not believe that the Quality of Service (QoS) scheme addresses those operators serving large businesses and we would encourage Ofcom to address this anomaly in its review of the scheme later this year. The QoS scheme, as shown in Ofcom's consultation, is clearly focused on the residential and SME markets. It should be limited to suppliers in these markets as there is little benefit to be gained by end-users through the inclusion of suppliers to large corporate companies. Not only are large corporate companies not being catered for, but it could be argued that the volume of orders for a large corporate rollout would distort performance levels when compared to that for an SME customer. Cable & Wireless has provided its experience in setting up the scheme but finds that the direction of the TopComm co-regulatory forum leaves Cable & Wireless customers increasingly side-lined in a scheme which clearly does not cater for their needs and provides end-users with a non-comparable view of the company.

We are also concerned that Quality of Service (QoS), as it stands, compares between different services (involving different technology) as if they were like-for-like (ie CPS, WLR and LLU). Whilst we appreciate that the end service to the consumer might be very similar and details on the technology used will not always be welcomed by consumers, such comparison could be detrimental to infrastructure-based suppliers if not accompanied by a minimum level of information on the differences between CPS, WLR and LLU. For example, LLU providers will be accountable to the customer for any fault on the line but a CPS provider will not as they will refer the customer back to BT as the line provider. We are concerned that even with the promise-based measures currently in use (and this is certainly a reason why time-based measures could never work), this distinction may be lost on the end-user. We suggest that Ofcom considers possible options available to distinguish between product types in the review of the scheme later this year and in any end-user feedback.

In addition, QoS involves significant cost for the Service Providers without any clear indication that it is effectively used by consumers. We ask that Ofcom seriously considers the level of usage / page hits that they believe would indicate the success of the TopComm scheme. There is a real danger that the lessons of CPI have not been learnt and that TopComm is going to become a scheme involving significant operator cost and effort with little consumer interest or awareness; much like the PASS scheme.

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

Cable & Wireless agrees with Ofcom's approach to switching as it relates to consumer information, i.e. evidence based and with a bias against intervention. However on this basis, we question Ofcom's conclusion that no action is required in relation to the discrepancy in the search time between fixed telephone offers (30 minutes) compared with broadband and mobile (~2 hours). This discrepancy also extends to the actual ease of switching between fixed or mobile suppliers versus switching ISPs for which at least an additional 10% of consumers found the process difficult¹. Whilst it is not the case that switching processes across all products and services will automatically be the same, there should not be significant differences in the ease of switching between them.

It is also important to recognise that where difficulties arise in switching between products and services in retail markets this may be underpinned by difficulties in migration of customers within wholesale markets. This is especially the case where the same service is offered by different ISPs but the underlying technology or process is different; for example the lack of a migration process from SMPF to MPF. This is explored further in Cable & Wireless' response to the migrations consultation.

¹ Page 70, 5.100

Cable & Wireless plc
Lakeside House
Cain Road
Bracknell
Berkshire
RG12 1XL

www.cw.com