

FCS Industry Forum Policy

Major issues for the competitive market

May 2008

Summary of major issues

FCS has identified a series of major issues that inhibit competitive development within the communications services industry and calls upon Ofcom to assist by refining the application of its policies.

Radio spectrum- Ensuring that there is certain access to radio spectrum for the regulated industries and mission critical sectors that depend on self-provided radio services as an essential economic input. Spectrum trading, introduced in 2004, has had negligible impact on spectrum use. Auction design needs to ensure that the entire available spectrum does not end up in the hands of one player.

Competition in the mobile market- Removing the barriers to market entry for new mobile operators- in particular mobile number portability, building mobile numbers and mitigating against the effects of countervailing market power. There is a need to regulate against the negative impacts of oligopolies.

Number Translation Services- A rigorous review of the impacts of changes to Ofcom's policies on 087 numbers to business and end-user organisations is needed within the current consultations. Regulatory Impact Assessments can contribute to effective policy making if they are comprehensive and independent.

Migrations- As convergence between technologies grows, action is needed to rationalise migration processes to ease the transfer of customers between suppliers and encourage tariff transparency.

Complaints processes- Establishing a proportionate complaints mechanism against Ofcom decisions, particularly for smaller industry players that cannot afford the current processes of an appeal to the CAT or a judicial review.

Introduction

The Federation of Communication Services represents businesses delivering communications products and services by means of fixed, IP, mobile, radio and wireless services.

Our mission is to help to establish a favourable operating environment for the industry through:

- Access to radio spectrum
- A fair and competitive trading environment
- Environmental and corporate social responsibility

And having regard to consumer needs and industry self regulation, while addressing technical matters affecting the industry.

The FCS Industry Forum, composed of Board members and sector group chairmen, brings together the common strategic objectives across the FCS and has set out the major issues for FCS in this paper.

Overall the sector is growing and FCS membership is increasing. FCS members provide innovative services and high-quality care to customers. FCS members generally source wholesale products from a variety of suppliers and provide converged solutions for their customers. The communications services sector is regulated by Ofcom and FCS requires its members to comply with all relevant regulations.

There are, however, threats to the success of the sector associated with access to essential inputs such as radio spectrum and unhelpful actions from larger players in the telecoms market. In these areas FCS looks to Ofcom and the Department for Business for redress.

Access to radio spectrum

FCS recognises the value of radio spectrum to the UK economy and is generally in favour of Ofcom's plans to introduce the spectrum market with a combination of administrative pricing, permission to trade and auctions. However, market mechanisms are not able to serve the general public interest alone and should be combined with public policy direction.

FCS has identified three areas of concern:

1 Spectrum auctions

The Digital Dividend Review did not acknowledge the requirements of business radio in the band. Auction designs are only suitable for large spectrum usage or public telephony. When spectrum is auctioned off it cannot be recovered for administrative allocation later. There is a fallacy that the losers in a spectrum auction can purchase spectrum from the winning bidder where they are competitors- this has not occurred for the 410-412 MHz UHF1 auction. Two recent auctions- UHF1 and L-band have been designed to permit the entire spectrum allocation to go to one bidder, which was the outcome in both cases and did not encourage competition. FCS proposes that Ofcom should continue to be the spectrum manager for Business Radio in the current bands and for access to new spectrum, and ensure that future auctions are designed to promote competition in spectrum provision.

2 Critical National Infrastructure

This sector is composed of regulated industries which require spectrum as an essential input. This sector requires certain access to spectrum and we propose that Ofcom allocates to the CNI sector the 872-876 MHz paired with 917-921MHz band, which has constraints that might make it less attractive to a commercial user. We recommend that UK Government gives direction to Ofcom on spectrum allocation for CNI to ensure the sector has access to a range of spectrum to meet future challenges.

3 Ofcom delays in BR licence liberalisation

There is a specific problem for CBS operators who have been overcharged by Ofcom for years as those with licences in urban areas have been charged “congested” licence fees where spectrum is not congested. Promises of fee reductions to rectify this have not been realised as the changes to licence fees have been linked with Ofcom’s licence liberalisation plans which are several years overdue. Ofcom plans to raise some national licence fees significantly without offering to mitigate the price rises with easier payment plans – this is contrary to the obligation on the telecoms industry to deal with its customers fairly

Communications services and the competitive market

Ofcom is tasked in the Communications Act 2003 s4 (3) to promote competition. In the following areas we believe that competition is at risk and seek Ofcom’s action. We believe that BERR similarly should encourage Ofcom to act.

Mobile new entrants

Lack of mobile number portability

In 2007 FCS welcomed Ofcom’s initial stance in addressing the incumbent MNOs’ restriction of access to mobile number porting by new entrant operators; but after 15 months of round table meetings chaired by Ofcom, none of the new entrants has yet ported a mobile number. No MNO is complying with GC 18. There are implications for the value of auctioned spectrum suitable for commercial services if the spectrum winners face major regulatory hurdles in building their businesses.

Closure of number ranges

In August and September 2007 two mobile operators cut off the mobile number ranges of new entrants without warning, preventing new entrants from commencing service. There is no end-to-end connection requirement for mobile operators, yet because of their size they have countervailing market power.

These problems for mobile new entrants illustrate:

- The problem of regulating an oligopoly- new entrants suffer while incumbents focus on competing with one another and appear to see the risk of new entrant complaints as minor
- The ability of each of the incumbents to affect the whole mnp project by putting up technical barriers or not allocating resources

- The value of auctioned spectrum diminishes where the regulator does not firmly regulate current obligations
- The potential for Ofcom “going off the boil” replacing focus on this problem with the UK Porting “solution” which, based on the experience of mnp, could be delayed by the same diversionary approach

Numbers

Numbering strategy

FCS welcomed Ofcom's Numbering Strategy published in 2006, but it appeared to be divorced from the ad hoc policy consultations associated with Number Translation Services- 0870 and 0871.

Pre-call announcements

FCS welcomes the action by Ofcom in November 2007 to remove the obligation for pre-call announcements on 08 and 070 number ranges. The action followed representations by industry which highlighted the health and safety implications for consumers and industry customers associated with the inherent time delay of pre-call announcements. However, a thorough independent regulatory impact assessment [RIA] prior to Ofcom's statement may have identified the potential problem and prevented this embarrassing U-turn by Ofcom.

We believe that a full review of Ofcom's 2006 decisions on the 08 range is overdue and would encourage Ofcom to focus on the impact assessment for industry customers.

Number portability

FCS has welcomed Ofcom's November 2007 statement and engaged fully with UK Porting on behalf of its members and other players. We note however Vodafone's appeal to the CAT is on the grounds of inadequate Regulatory Impact Assessment and would urge Ofcom to undergo more detailed assessments of the regulatory impact of their proposed policies in future. Ofcom policy is to move mobile number portability to 2 hours yet we have noted that Ofcom has not supported the EC Framework proposal for 1 day porting for fixed and mobile numbers.

Proportionate complaints mechanism

Small companies and new entrants do not have a proportionate complaints process in the case that they disagree with an Ofcom decision. The options currently available include judicial review and reference to the Competition Appeals Tribunal, both of which are disproportionately costly and lengthy for a company that has a turnover of less than £5 million per year.

Equipment

WEEE directive

The UK was slow to implement the WEEE directive, but when it did there was insufficient account of the value of second-hand reuse when determining producer obligations. Defra studies show that mobile phones do not appear in the municipal waste stream but the producers are required to contribute as if they were. In line with Germany and other countries, the UK

should set up a separate WEEE category for mobile phones and accessories to ensure that there are adequate incentives to promote reuse.

Installation of wireless equipment in vehicles

Evolving transport policy is leading to greater dependence on intelligent transport systems and in-car wireless equipment. The installer community that provides the after-fit services for phones, two-way radios, telematics, GPS and other systems in vehicles are a vital link in transport policy implementation.

The installer community in FCS would like to be added to the stakeholders that UK government consults on changes to regulations.

The code of practice for the installation of wireless equipment in vehicles (now called FCS1362) was relaunched in May 2008 and is managed for the industry by the FCS. The code is the basis of the FCS accreditation scheme for equipment installers.