

*Representing the Communication Services Industry*



## **Mobile citizens, mobile consumers**

### **FCS response to**

### **The Ofcom consultation Issued on 28 August 2008**

FCS Contact:  
Jacqui Brookes OBE  
CEO  
FCS  
Burnhill Business Centre  
Burrell Row  
Beckenham  
Kent BR3 1AT

[www.fcs.org.uk](http://www.fcs.org.uk)

## Contents

	<b>Page</b>
<b>Summary</b>	<b>3</b>
<b>1 Introduction</b>	<b>4</b>
<b>2 Mobile market</b>	<b>5</b>
<b>Major issues for FCS members:</b>	
<b>3 FCS member survey</b>	<b>6</b>
<b>4 Mobile new entrants</b>	<b>6</b>
<b>5 Mobile number portability</b>	<b>6</b>
<b>6 Closure of mobile number ranges</b>	<b>7</b>
<b>7 Fixed mobile convergence</b>	<b>8</b>
<b>8 Tariff transparency</b>	<b>8</b>
<b>9 SMS</b>	<b>8</b>
<b>10 History</b>	<b>9</b>
<b>11 Conclusion</b>	<b>9</b>
<b>Answers to the consultation document questions</b>	<b>10</b>
<b>Appendices:</b>	
<b>1 FCS mobile market opinion survey- 2008: Summary report</b>	<b>15</b>
<b>2 SMS issues</b>	<b>17</b>
<b>3 FCS response to Oftel's 2001 mobile market review- separate document</b>	

## Mobile Sector Assessment- FCS response

### Summary

In a period of economic downturn the telecoms sector as a whole and the mobile market in particular is able to deliver essential support for the economy. With demand for greater efficiencies and lower cost solutions by customers, Ofcom has a central role to play and targeted regulation rather than a "light touch" will provide the solution.

As the UK moves forward into an effective converged fixed and mobile telecoms market the FCS believes that Ofcom has to act on deficiencies in the mobile market that have lain untouched for some time. FCS members report that the mobile market is not sustainably competitive within the distribution chain and these areas require Ofcom's attention.

In this response we have identified several areas of concern associated with

- Mobile new entrants
- Mobile number portability
- Closure of mobile number ranges
- Fixed mobile convergence
- Tariff transparency
- SMS

FCS supports many of the outcomes that Ofcom is seeking in this review.

We view the optimum market as one that has a multiplicity of suppliers down the distribution chain and where there is a bottleneck, such as the obvious limitation in national infrastructure, wholesale access on fair and equitable terms should be obligated. At the same time mobile new entrants need specific support to enter the market such as recipient led mobile number portability and direct routing of ported numbers. This will lead to a wider choice of suppliers, who require a sustained fair and competitive regulatory environment to deliver services.

We specifically seek a wholesale SMS review and an urgent cross industry/ regulator/ consumer project on tariff transparency.

## 1 Introduction

The Federation of Communication Services [FCS] is the UK Trade Association for the communications services industry representing suppliers of products and services delivered by mobile, fixed, IP, wireless and other modes. More information on the FCS and a directory of our company members may be found on the website [www.fcs.org.uk](http://www.fcs.org.uk)

The FCS is pleased to have the opportunity to respond to the carefully thought out Mobile Sector Assessment [MSA] consultation that focuses on adapting regulation for a mobile and wireless world.

The FCS members that are specifically affected by mobile regulation as market participants include:

- New entrant mobile operators
- Mobile equipment manufacturers
- Service Providers
- Resellers
- Dealers and retailers

The customers served by our members- the Mobile Market- include UK business and the economy as well as individual consumers. Our response assumes that Ofcom agrees that the terms "Mobile citizens" and "Mobile consumers" include the corporate and enterprise sector.

A helicopter view of the UK with 5 competing vertically integrated mobile operators dominating the mobile market may seem like a "paradise of competition" but such a superficial view belies problems in the market leading to our view that there is consumer and business deficit in the UK that regulation needs to act upon.

Looking forward, we predict that all customers will seek new services and innovation. In a period of economic slowdown and beyond both the public and enterprise sectors will demand improved efficiency and reducing costs. Telecoms particularly mobile services enhance business efficiency and are drivers for the economy as a whole. However cost reduction driven by sustainable competition is a function of the retail market, which we believe requires more regulatory scrutiny.

The undoubted economic downturn has implications for the telecoms sector and its customers; in a recently published view Andrew Parkin-White, Practice Leader at Analysys Mason <http://www.analysismason.com/> says:

*One key area of focus for telcos is cost control; they clearly want to conserve cash at present, either to build up reserves or to service existing debt. Companies that have taken on heavy debt burdens as a result of marked expansion in recent times are finding their survival under serious threat in the current economic situation. Plainly, telcos will be curbing supply-side investments in favour of a more measured investment approach and cost control. Smaller players that are unable to make economies of scale will be unlikely to continue building access networks with duplicate footprints. Investments in next-generation access networks and evolutionary mobile technologies will be more disciplined. Similarly, as in other sectors of the economy, M&A activity will be more selective.*

*The demand side is more difficult to predict, as telecoms services have never previously been tested in a downturn. The market has changed beyond all recognition since the last recession, in the early 1990s. At that time, mobile was a minority service and POTS was standard on the fixed side. Spend on telecoms, as a share of GDP, demonstrates a relatively consistent downward trend. Given falling GDP, increasing inflation, a shrinking enterprise sector and fear and uncertainty in the consumer market, end-user demand will suffer. The extent to which revenue will fall is more difficult to forecast at present. It is likely to be several months before real market behaviour confirms the level of the downward trend in spend.*

In this response we address major issues affecting the market in our comments and in answers to the consultation questions. They include:

- 10 FCS member survey
- 11 Mobile new entrants
- 12 Mobile number portability
- 13 Closure of mobile number ranges
- 14 Fixed mobile convergence
- 15 Tariff transparency
- 16 SMS

## 2 Mobile Market

When Ofcom reviewed the telecommunications market in 2004-5 it set aside the problems with the mobile market and concentrated on the fixed telephony sector and the dominance of BT. The review resulted in the BT Undertakings and the establishment of Openreach delivering equivalence products

The BT Undertakings have opened up the fixed line sector to competition, not only to a few selected alternative operators, but to a thriving and evolving competitive Communications Provider [CP] sector that is delivering broadband, WLR, VoIP and multiple other services. Openreach now has over 400 CP customers.

But access to mobile services by the same CPs is restricted and the strong question remains - why cannot functional separation be extended to large mobile incumbents?

Customers, particularly business customers, who demand the level of customer care provided by independent fixed line providers, are unable to access the same level of support with a single bill for fixed, broadband and mobile since their suppliers cannot offer the mobile service element. Resellers report that wholesale mobile offerings are not competitive compared to the direct sales of the incumbents. The dealer community cites similar undercutting by the direct arm of their suppliers

An opinion survey of FCS members in Appendix 1 demonstrates these concerns in more detail and a specific case study by reseller the Phone Co-op was presented at the FCS Comms Provider 08 event [see [www.fcs.org.uk](http://www.fcs.org.uk)]. The Phone Co-op provides community services to its members but whereas fixed line telephony is accessible at reasonable rates, no suitable mobile reseller deals have been available. This example illustrates one of the problems with the market and lack of access for customers to such new services particularly for community mobile.

Access to radio spectrum is limited. Planning permission in the densely populated UK islands and public wariness restrict expansion of radio infrastructure and so without a regulatory remedy competitive access to mobile markets for retail competition faces significant hurdles. New entrant operators face significant barriers and require regulatory support to enter the market

Ofcom's strategy in telecommunications is to promote competition at the deepest level of infrastructure that is effective and sustainable, but as new infrastructure is limited [there have been 5 national GSM/3G mobile operators for 6-7 years, the sole national public access radio service ceased on 2001 and mobile new entrants are facing market entry barriers], the deepest level of infrastructure for mobile is probably at the wholesale level and there Ofcom needs to apply regulation.

There is a level of competition in the residential or individual consumer market, but this is based on a long established model of handset subsidy that does not easily enable other competitive models to enter the UK market.

### 3 FCS member survey

During 2008 FCS conducted opinion surveys among its diverse membership, which is summarised in Appendix 1

The overriding concerns raised by industry players, that impact their customers, are:

- the lack of a level playing field between independent suppliers and the direct arms of vertically integrated mobile operators; connections via third parties take longer than direct sales;
- in an environment of growing fixed mobile convergence resellers in the fixed sector are unable to access mobile services on suitable terms;
- the inability of finding a operator willing to permit wholesale access so that a reseller can add operator minutes to their bill;
- contract terms are getting longer, tying in some customers for 18-24 months and inhibiting customer transfer to an alternative supplier;
- customers are not getting a good deal since there is not a fair playing field between direct sales and independent suppliers- the impact of vertical integration is to reduce choice for the consumer;
- there is not sufficient competition in the retail mobile market as 3<sup>rd</sup> party providers are frozen out; and
- the solution is to ensure equal access to all CPs as provided by Openreach

The overall opinion arising from the survey is that there are barriers at the retail level and that wholesale access is almost impossible to achieve except for a few large MVNOs, unlike the fixed and IP sector. FCS members conclude that the barriers arise from the nature of vertical integration and the limited numbers of mobile operators, which only the regulator can address.

### 4 Mobile new entrants

New entrant mobile operators have been encouraged to enter the mobile market by Ofcom and radio spectrum auctions have been designed to release blocks of spectrum to entice new names into the marketplace. But, as Ofcom acknowledges in the consultation, new entrants have had a difficult time in the UK. Elsewhere in Europe market entry is speedier and other Europeans are benefiting from the new services provided. Inward investors to the UK report that the lack of mobile number portability [mnp] as a deterrent and have set up services in other Member States in preference where recipient led mobile porting is available and market entry welcomed.

The DECT guard band licensees are one example of mobile new entrants. Ofcom auctioned the spectrum [1781.7-1785 MHz paired with 1876.7- 1880 MHz] in May 2006 to 12 licensees permitting concurrent access for low power services. But market entry by the 11 non incumbents has been thwarted because of the barrier of mobile number portability, an obligation regulated by Ofcom itself. No wonder Ofcom is unable to report success in section 3.94 of the consultation.

There are implications for the value of auctioned spectrum suitable for commercial services if the spectrum winners face major regulatory hurdles, which are also the responsibility of Ofcom, in building their businesses

### 5 Mobile number portability

The existing mnp processes are owned by the 5 mobile operators [MNOs]. 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 20 months of round table meetings chaired by Ofcom, none of the new entrants has yet reported the ability to port a mobile number with all incumbents. Compliance with GC 18 is proving difficult.

The current mnp process is donor led. Any new entrant is required to be accepted by the Operators Steering Group, to set up commercial bilateral contracts with each of the other operators and undergo bilateral testing. FCS has assisted where it can to support the OSG, which is an unincorporated body. Commercial arrangements between large incumbents and small new entrants have raised new issues for resolution and Ofcom cannot intervene unless a dispute is raised- adding further time delay. The cumulative effect of this complex process is to slow down entry by new entrants. Consumer detriment follows when new and innovative services cannot be brought to market.

Ofcom had proposed the establishment of a Central Data Base of ported numbers and recipient led mobile porting which was due to be in place by September 2009, referred to in Section 6.18 of the consultation. This arrangement would have brought the UK up to date with number portability processes that are well established in Europe and Australia. But, following the Vodafone's successful appeal to the Competition Appeal Tribunal on 18 September 2008 that opportunity has also receded as co-operative work under the industry body UK Porting- [www.ukporting.org.uk](http://www.ukporting.org.uk) - has now ceased.

## 6 Closure of number ranges

In August and September 2007 two mobile operators cut off the mobile number ranges of new entrants operators without warning, preventing new entrants from commencing service. Reasons cited included unsatisfactory new entrant termination costs.

FCS members commented that an incumbent can wield immense power through being able to withhold the building of numbering or even un-build numbering. Take an example of an incumbent MNO with 15 million subscribers and a new entrant with 25,000 subscribers. While over 99.8% of the incumbents customers may not care that they can not reach the new entrant's subscribers, it will certainly be the case that approaching 100% of the new entrant's customers will care that they can't be called by subscribers of the MNO.

This action can take place as there is no regulation of end-to-end connection requirement for mobile operators, yet because of their size they appear to have countervailing market power.

This has very serious implications. Unless Ofcom acts on this matter, then any OCP is free to disconnect any Terminating CP service [competing or otherwise] without due notice or reasonable negotiation. It is therefore probable that small businesses in this market are now at severe risk of being cut-off without notice from all except BT, on which a clear end to end obligation has been placed.

[http://www.ofcom.org.uk/consult/condocs/end\\_to\\_end/statement/](http://www.ofcom.org.uk/consult/condocs/end_to_end/statement/)

It is interesting to note that in the above Statement of September 2006, Ofcom sets an important caveat:

*"4.3 In setting this condition, Ofcom considers it is necessary to ensure end-to-end connectivity is available in the UK. As set out in the July consultation, in Ofcom's view it is sufficient and proportionate to do so by imposing an obligation on BT only. Ofcom believes that other PECNs will have a commercial incentive to provide end-to-end connectivity to their customers that should be sufficiently strong to ensure that they seek to purchase call termination and that no additional ex ante regulation is required. However, Ofcom would examine the case for proposing ex ante conditions on other PECNs should they not provide end-to-end connectivity."*

Clearly Ofcom's belief that "no additional ex ante regulation is required" has been superseded by events and Ofcom should look to strengthening of the end to end obligation. Otherwise companies will be very wary of the risk of launching their mobile services in the UK.

This means that, without price regulation, mobile originated international calls and roaming charges could "remain excessive for the foreseeable future", to the detriment of the UK/EU consumers and businesses.

## 7 Fixed mobile convergence

The consultation recognises that Fixed Mobile Convergence [FMC] is inevitable. But to be effective FMC requires network neutrality, transparent customer migration and numbers that are not linked to a particular service. This suggests for example that 07 numbers would no longer be referred to as “mobile numbers”. New FMC services can offer a single number to a customer that can be used on a mobile, a VoIP phone or a home DECT phone with controlled costs. We believe that demand for cost reduction by customers will be a strong driver in this time of economic slowdown

Conditions for the success of FMC include:

- The provision of Mobile broadband, VoIP and hosted services by multiple players
- Transparent and seamless customer migration between suppliers
- Tariff /price transparency
- Common portability processes across technologies. FCs encourages Ofcom to reinvigorate its planned number portability policy of recipient led porting with direct routing of numbers via a Central database of all numbers

## 8 Tariff transparency

Tariff transparency, a facility to advise customers of how much a telephone call will cost, is an example where neither the regulator nor industry alone has been able to reach a satisfactory conclusion, yet our members report this is a gnawing problem that is ripe for action. Ofcom and Phone Pay Plus both report increasing customer complaints about their mobile bills, a result of a lack of price clarity.

The benefits of price transparency are evident and include

- Consumers make informed choices
- Consumers get protection
- Reduction in scams and corporate swindles
- Efficient price competition
- Drives down wholesale termination rates
- Less Intrusive regulation
- More trust in the market

Several solutions have been put forward by the regulator and industry in different fora and each needs to be reviewed under a single project. Number prefix related to price, pre-call announcements, tariff tables, press star followed by the phone number to obtain the call charge- each have been proposed but none yet universally adopted.

Ofcom could direct industry to come forward with reasonable proposals in a set timescale, tested with consumers, using a format such as the OTA and led by an independent chairman. But “Industry” does not imply only the large company players but representatives of smaller players and new entrants as well contributing on an equal footing

The key to successful action is inclusion and transparency across all services, taking into account what current technology can provide. This is a project that crosses technologies but needs to be urgently addressed.

## 9 SMS

Wholesale SMS is the service necessary to enable delivery of an SMS from the user of one network to another. Purchasers of mobile termination can be fixed and mobile operators, aggregators or intermediaries that bundle customers’ demands for SMS in bulk.

With the growth and variety of use of SMS, market limitations have been revealed and Ofcom proposed to conduct a review of the wholesale SMS market in 2007. However that was shelved due to resource constraints. In our summary of the issues for wholesale SMS- see Appendix 2 we recommend that:

- SMS must not be differentiated from voice within mobile number portability and Ofcom must clearly state its policy and implement where transgressions occur. We also recommend
- Ofcom should review the SMS market as regulation would seem necessary to remove the current market distortion where wholesale SMS is higher than retail pricing; for example the French and Spanish authorities have recently regulated the SMS termination market
- There should be an obligation similar to voice that covers the routing of SMS as this is a barrier to new entrants, e.g. the issues that new entrants have endured as there is currently no such obligation. (Obligation to Buy)
- Ofcom should allocate SMS short codes, in effect increasing competition in this market, as at present only BT can offer multi network short code SMS services.

## 10 History

The mobile market structure today appears remarkably similar to that of the last decade.

FCS Mobile Independent Service Providers submitted a response to the mobile market review carried out by Oftel in 2001. Our response, which is appended in Appendix 3, included an analysis of competition in the mobile sector by Professor Yamey who concluded that with 4 or 5 mobile operators an oligopoly in the market exists and:

- The UK mobile market is not effectively competitive, there is no prospect of effective competition in the two year term of the review and, given the market structure, in the medium term; but does not exclude effective competition arising at some point if retail competition is encouraged. Suggestions are made as to how retail competition can be encouraged through effective regulation;
- The oligopolistic nature of the market, de facto, means that each of the four MNOs has market power. A report on why this is the case is included in the response;
- If Mobile Independent Service Providers had access to unbundled network services at cost based prices they would introduce real competition in prices at the retail level;
- Oftel should be proactive in acting to prevent leverage of market power by MNOs, foreclosure of access and exclusive arrangements; and
- Oftel must be better resourced to remedy breaches of the regulations in a timely way, to minimise damage and prevent unfair first mover advantage being gained particularly in the introduction of new non-voice and other value added services in the future, for example mobile Internet.

The conclusion then was, in order to promote competition, both upstream and downstream, and to serve the interests of consumers, Oftel should establish and maintain conditions of undistorted competition in the service provider market such that MISPs and the service provider outlets of network operators compete on an equal footing

Replace the word Oftel with Ofcom and little has changed in the intervening 7 years- rather than the UK being a place for mobile competition it is becoming a turgid market where incumbents and not regulators appear to frame the rules for competitive entry.

## 11 Conclusion

FCS supports many of the outcomes that Ofcom is seeking in this review, but we view the market as one that has a multiplicity of suppliers down the distribution chain and where there is a bottleneck, such as the obvious limitation in national infrastructure, wholesale access should be obligated. At the same time mobile new entrants need specific support to enter the market. This will lead to a wide choice of suppliers, who require a fair and competitive regulatory environment to deliver services. We specifically seek a wholesale SMS review and an urgent cross industry/ regulator/ consumer project on tariff transparency. We urge Ofcom to take a holistic view of the whole mobile market, linked to FMC, to help to drive the market forward.

## **Consultation questions**

### **Question 1.1: What are the implications of market change for mobile and wireless services?**

The prospect of new entrants across the distribution chain successfully joining the mobile market will introduce new services and competitive offerings to customers. But new operators will require a regulatory “shoe in” to become established as the current regulatory environment enables entrenched patterns of competition to prevail and, as we have described above, creates barriers to market entry.

The move towards fixed mobile convergence, customer demand for greater efficiency and lower costs will combine to reduce the distinction between fixed and mobile services and will require a regulatory envelope that does not give preference to one service over another.

Infrastructure is a national asset.

Regulation should be refocused on wholesale access across the technology platforms- fixed, mobile broadcast- rather than solely on competing infrastructures. Regulation will be needed facilitate ease of customer movement between suppliers and services and that implies active regulation to ensure recipient led number portability supported by direct routing and migration processes.

### **Question 1.2: How are citizens and consumers affected by developments in the mobile sector?**

Ofcom rightly points out the ubiquity of mobile services and essential role that mobile plays in individual and commercial life in the UK with the potential for widespread new applications in the health and transport sectors, social networking etc. Mobile telephony can enhance public welfare and as such the mobile sector has a social responsibility over and above commercial boundaries.

New developments in the mobile sector can lead to greater efficiency, increased competition and greater coverage, provided the regulatory environment ensures adequate incentives are in place.

### **Question 1.3: What are the purposes of mobile regulation, and where should its focus lie?**

As noted in the responses above, mobile regulation should facilitate competition along the distribution chain and address the market distortions. The focus should be:

- To assist new operators to enter the market by proactively addressing barriers to market entry in a timely manner such as recipient led mobile number portability
- To ensure wholesale access on fair terms to the incumbent networks
- To promote retail competition
- Promotion of interoperability
- Facilitation of customer migration
- Tariff transparency

### **Question 1.4: What is the scope for deregulation, competition and innovation in the mobile sector?**

#### **A4.3 Section 3 – Today’s UK mobile markets**

Regulation in the mobile market is needed to address the issues outlined in the answers to Question 1 above. At some point in the future deregulation might be considered but it is unlikely to be an option until there is undistorted competition; there has been little change in the past 7 years.

### **Question 3.1: What do you think are the features of a well-functioning mobile market? What evidence do you see that those features are present in the UK market?**

The features of a well functioning market include:

- Undistorted competition at the wholesale and retail level for voice, SMS and MMS services
- A range of CPs with different service offerings
- Ease of customer migration across networks
- Price transparency
- Recipient led number portability
- End to end connectivity for SMS and wholesale pricing of SMS
- Robust processes in place to maintain the competitive market
- Consumer protection- firm action on abuses such as slamming

**Question 3.2: What measures are most appropriate to assess whether the mobile sector is performing well for citizens and consumers?**

In relation to our answers to question 3.1

- Access to a range of mobile services from a range of suppliers- large and small
- Fair and undistorted competition between operators and CPs
- Shorter duration contracts
- Ease of switching suppliers
- How easily new entrants can join and continue within the mobile market
- Reduction in consumer complaints

**Question 3.3: How will market dynamics change as a result of trends such as availability of new spectrum, mobile broadband and new ways of delivering voice services?**

- The ability to develop sustainable services using new spectrum allocations will depend on the regulatory framework supporting new entrants otherwise the incumbent MNOs will continue to be dominant suppliers
- That given, the existing services will become substitutable.
- IP based services will make considerable inroads into established mobile services

#### **A4.4 Section 4 – Consumers**

**Question 4.1: What is your experience, as an individual consumer or an organisation that uses mobile services?**

No comment

**Question 4.2: How should regulators and policy-makers respond to signs of rising consumer concern?**

Identifying nascent consumer problems early is a challenge for regulators and industry alike. Trade Associations like FCS require compliance by our members to existing rules, set by regulators or ourselves, and action is taken based on complaints.

Identifiable consumer concerns should be raised directly with industry itself using rapid communication routes through industry fora and trade bodies as a first step, to scope and analyse the problem. If existing rules or obligations have been broken then appropriate action must be taken following transparent and reasonable processes.

If the consumer concern is new or there are no rules in place the regulator and industry should establish task groups to review, research and propose remedies. The regulator does not always have all the skills to hand to do this work alone and can be open to appeal on its judgments such as the Vodafone CAT appeal on number portability. That is why industry has to be involved. Some consumer problems are the result of crime or an unclear understanding of the use of telephony. The outcome may be regulation, or

codes of practice. Proportionate enforcement is key to maintaining consumer and industry confidence in the market.

The key to successful action is inclusion and transparency across all services- taking into account what current technology can provide

**Question 4.3: What are the important factors to consider in striking a balance between protecting mobile consumers and enabling markets to work flexibly? Have we got this balance right in today's mobile market?**

As we have said earlier, consumer protection will be improved if there is fair and effective competition in the sector with the facility for consumers to move easily to a different supplier.

The balance is not right today - Ofcom needs to work to achieve a regulatory regime that delivers sustainable competition.

#### **A4.5 Section 5 - Citizens**

**Question 5.1: How does the use of mobile services affect our participation as citizens in society?**

Improved communication, personal well being and efficiency

**Question 5.2: What factors should we take into account in thinking about access and inclusion issues in mobile markets?**

Ensuring the market is open, competitive and flexible and, where necessary, universal service obligations

**Question 5.3: What factors should we take into account in thinking about new services, and how those services may affect issues like protection of children, privacy and security?**

These issues are wider than the mobile sector alone and should be addressed at a national level

**Question 5.4: Have you been affected by issues about coverage or 'not spots'? How has it affected you?**

No comment

#### **A4.7 Section 7 – Scenarios**

**Question 7.1: What do you see as the most influential trends and features of mobile and wireless markets in future?**

- Convergence of fixed, mobile, broadcast platforms
- Growth in mobile broadband
- Ability to port numbers between mobile, fixed and IP
- Resellers providing converged offerings including mobile to boost the productivity of UK business

**Question 7.2: What new policy and regulatory challenges could the trends identified in this section bring? Which policy and regulatory challenges could they address?**

- Dominance and market power in parts of the value chain are not currently addressed by regulation
- Growing dominance in mobile by organisations dominant in other markets such as fixed, broadcast, base station sites
- Re introducing Ofcom's number portability proposals this time backed with evidence that the national benefit outweighs the costs.

Each area requires regulatory oversight to ensure against abuses of market power

#### **A4.8 Section 8 – Implications**

##### **Question 8.1: Should Ofcom do more to promote competition in mobile and wireless markets?**

Yes as discussed in previous questions:

- Support for new entrant operators
- Wholesale access to networks
- Oversight of retail competition
- Recipient led mnp
- Seamless migration

##### **Question 8.2: Ofcom's strategy in telecommunications is to promote competition at the deepest level of infrastructure that is effective and sustainable. How might this strategy be applied, given future developments in the mobile sector? Under what circumstances, if ever, would it make sense to consider access regulation for mobile platforms?**

Regulation of access to dominant platforms by independent service providers to encourage greater competition among providers and services

##### **Question 8.3: What role can competition play in ensuring that future development of the mobile internet provides an open and flexible environment for a wide range of services? Should Ofcom explore open access requirements to ensure opportunities for innovation? What role might 'net neutrality' play in the mobile sector?**

Yes we support the view that open access will ensure rapid introduction of competing services  
Net neutrality is important to ensure a level playing field for new entrants and freedom of choice for the consumer. Individual consumers and the enterprise sector require service to enhance their own well being or business efficiency; they expect effective supply without involvement in the intricacies of the technology or platform delivered to them. FCS members require access to all platforms in order to deliver services to customers and add their own innovative products.

##### **Question 8.4: What role might competition play in addressing questions about transparency of prices, services and contractual conditions offered to consumers of mobile and wireless services? What role should regulation play in addressing these questions?**

A competitive market is based on the merits of the services offered by the supplier and not on the size of the company involved. Tariff transparency and contractual conditions should be the norm for the industry working to common basic standards.

##### **Question 8.5: What is the best way to promote content standards and ensure privacy protection for increasingly complex content and transaction services? How will privacy issues fare in a world where services are more personal and more complex?**

No comment

##### **Question 8.6: Will the mobile termination rate regime need to evolve or change more fundamentally? What is the best approach to adopt?**

All undertakings should receive a reasonable rate of return on the capital invested  
Caller pays is the fairest regime- the general public would balk at the prospect of having CPP and having to pay for scam calls or cold marketing calls

**Question 8.7: If competition does not reduce international roaming charges sufficiently, how should regulators respond, if at all?**

It is important for NRAs to support EC proposals for international roaming charges. National roaming is an increasing demand by consumers in the UK and this should be opened on fair and reasonable terms to all operators not limited to the major incumbents.

**Question 8.8: How might universal service and universal access need to adapt in a world where we increasingly rely on mobile services? What role might mobile play in universal access delivery in future?**

As mobile services grow, particularly if new entrants can be encouraged to enter the market to deliver a range of service including in the not spots, then the demand for universal service may lessen, but end to end connectivity must be provided, including for SMS

**Question 8.9: Can markets and commercial agreements address issues such as 'not spots' and emergency access? If not, what role might be played by a regulator to address these issues?**

As mentioned in Question 8.8 above the market must be open to new entrants as the most appropriate option and investigation of interoperability with other services.

**Question 8.10: How might access for particular groups (such as the elderly and disabled users) need to evolve in future? What role can competition play in addressing these questions?**

Greater encouragement of retail competition will drive suppliers to develop services for particular groups

**Question 8.11: Do you have any comments regarding our proposed way forward and the objectives of the next phase of this Assessment?**

We support Ofcom's approach to enter into dialogue with stakeholders and we encourage Ofcom to review its own powers under the current Communications Act to ensure it can take actions in areas of market deficit. If not a reference to the Competition Commission would be the next step.

The current tight knit mobile sector can be opened to wholesale and retail competition but only with Ofcom's will and support.

## Appendix 1

### FCS mobile market opinion survey- 2008: Summary report

Following announcement of Ofcom's Mobile Sector Assessment review in March 2008, FCS has carried out a series of surveys among its telecoms members to obtain their views on the mobile market. Responses were received from a representative sample of a range of communications providers, some of which are currently providing services and some seeking to enter the mobile market.

#### Current Supply Arrangements

*For members currently delivering mobile services, we asked whether they had any concerns about their current supply arrangements or the ability of the services offered to meet customers' needs.*

- Most respondents expressed the view that current supply arrangements are restricting competition and that they are not experiencing a level competitive playing field. Specifically, many felt that the Mobile Network Operators [MNOs] undercut wholesale prices with direct sales. Service providers and resellers are restricted to a limited range of pre set deals offered from mobile operators. Instances have been cited of MNO pricing which is at least double what any reasonable size SME (i.e. with 50 handsets or more) would get if they go to the MNO direct.
- Some distribution companies were perceived as lacking in appropriate product and airtime knowledge, leaving dealers and service providers to source this information for themselves.
- There is also a perception that indirect sales are subject to unnecessary red tape which prevents them in adhering to their delivery times creating difficulties in managing customer expectations.
- Dealers and service providers also feel that they are disadvantaged by the fact that MNOs prioritise their own stores and direct sales force, irrespective of when orders were placed with them.
- MNOs also often seek to bill the end-user customer direct. This used to be the case in the fixed line market, but now the fixed line service provider or reseller owns the customer relationship. With their foray into fixed line, the MNOs are able to compete against fixed service providers for the same services and yet the fixed line service providers cannot compete against them.
- Service providers providing services based on WLR and CPS would also like to be able to offer clients the ability to take monthly billed minutes and line rental directly with themselves and to bill on a consolidated basis, something that their customers request.
- Several instances were also reported of MNOs suspending access for their customers to new entrant mobile number ranges. Many customers of the new entrants were the forced to stop using the service, because they could not receive calls on their mobile number and with the big players controlling market customers had no other choice but to use a different provider.
- Many members who do not currently provide mobile services are keen to do so but are deterred by a combination of the above issues

#### Barriers preventing service providers from providing mobile services.

*We asked members if there were any perceived barriers to their provision of mobile services.*

Members cited the unavailability of commercially viable or competitive wholesale offers in the business to business space.

- Respondents complained about a lack of availability of reseller packages which would enable smaller players to provide a consolidated bill to end-user customers for both fixed and mobile services.
- Unwillingness on the part of MNOs to deal with smaller players was also cited.
- Problems with provision of access to new entrant number ranges either via slow data build or unilateral closing down of some ranges.
- Direct offers and promotions offered by MNOs that service providers are unable to compete with without losing money. Access to support and training that is required for new products and services is also seen as a problem.
- Inefficiency of current porting processes such as delays in provision of PAC codes.
- We are unable to find a network operator who is willing to let us wholesale their traffic and on bill to our clients.

### **End-user customer experience**

*We asked whether members believe that end-user customers are currently getting a good deal in the mobile sector.*

None of the respondents felt that customers were getting a good deal. Members felt that their customers want converged and integrated delivery but that MNOs are restricting access via resellers thereby reducing customer choice.

Respondents said:

- "Using a mobile phone is costly particularly for services such as roaming and data"
- " Because there is no alternative service customers have to pay "extortionate" fees to make and receive calls. Alternative products from SPs which address this are seen as a threat by the big players."
- "Clients are basically unaware due to the complexity of the offers"
- "Why is a mobile call to a UK landline still at an average of 10p per minute greater? The same call on the PSTN is 1.5p."
- "The trend for reducing dealer commissions and increasing offers on longer contracts, intended to reduce customer churn, will bind customers into longer contracts which may make it more difficult for customers to move to another supplier to gain a better deal"
- Several reseller respondents cited the high levels of customer care that they provide for their customers, which they believe cannot be replicated by the larger MNOs.
- "With the networks taking over business customers directly, competition is minimal once the customer is direct. The networks do not then act in the interests of the customer, as a dealer would."

### **Competition**

*We asked whether there is sufficient competition in the sector at either the wholesale or retail level.*

There was a very clear consensus that competition is not effective.

- Service provider and resellers are effectively frozen out and choice is restricted to the four main providers who our members say are less innovative and competitive and do not offer sufficiently transparent rate cards.
- The fact that MNOs can sell direct to end-user customers is the major issue without any requirement to provide viable wholesale services. This is borne out by the fact that there are 5-6 operators compared to several hundred fixed line carriers/resellers.

### **Regulatory remedies**

*We asked whether members' believe that regulation on the Mobile Network Operators should be reduced or increased (e.g. to require them to provide access to appropriately priced wholesale services)?*

Most respondents favoured a specific increase in regulation to prevent MNOs from undercutting service providers which it is believed undermines the entire industry and confuses the customers. Most indicated that MNOs should be forced to provide a workable wholesale model

It was specifically suggested that there should be SMP on mobile call origination.

### **Other comments on the sector.**

- The unfair method adopted by the Networks on restriction of customer amendments to their tariffs. Most are not allowed to amend for the first 6 months of a 12 month, 8 months of an 18 month, and 12 months of a 2 year contract, with one MNO allowing no amendment on a 2 year contract
- Cashbacks have created a problem area in the industry, and should be controlled better from a dealer and customer viewpoint.
- Network Poaching on Dealer orders, which could be simply eliminated, by adopting the same method of note-padding a customer account with the Dealers code and date of contract, as they do for Specialist Dealers.
- The sector should be further split up into separate data and voice propositions, therefore allowing staff to be adequately trained in both: hence giving the independent channel and more importantly the end user a more informed decision upon their product.

## Appendix 2 Wholesale SMS

SMS provides a mechanism for transmitting short messages (up to 160 characters) between mobile handsets and between fixed devices and mobile handsets using the mobile networks. SMS services are incorporated in a wide range of messaging applications. For instance, emergency search and rescue services can use SMS as a two-way alert system between controllers and team members, and e-mail SMS solutions can be created to allow customers to send and receive SMS through their existing e-mail software.

Essentially, the mobile network infrastructure that is used to send and receive SMS is the same as that used for the delivery of voice calls, except that SMS are routed through short message service centres (SMSC). As with voice calls, an SMS must also be "terminated" on the mobile network to which the intended recipient subscribes. The sending party typically pays for the entire cost of the SMS.

Rather than pay the mobile network operators' (MNOs) usual retail prices for SMS delivery, customers wishing to send large volumes of SMS can negotiate volume based discounts with the MNOs. The disadvantage to them in doing so, however, is that they are required to enter into agreements, and establish direct interfaces, with each MNO.

Many commercial customers choose instead to use companies which act as intermediaries between the MNOs and provide the customer with a single interface. These companies are commonly referred to as "aggregators" because, by aggregating all of their customers' demand and then purchasing SMS services from each of the MNOs in bulk, they can enjoy economies of scale which allow them to buy SMS services at wholesale prices. Therefore, by using an SMS aggregator, a customer can reduce the complexity and cost of sending bulk SMS (also referred to as "SMS Push").

By using its network infrastructure an SMS aggregator can enable messages generated from a mobile device, PC or software application to be routed to another mobile device, employing third party mobile networks to carry the data.

An aggregator can purchase SMS services by:

- (a) Purchase an MNO's wholesale SMS service
- (b) Purchase an intermediary's service
- (c) Purchase SMS termination from an MNO via an SS7 interconnect

Option c provides the aggregator with the greatest control over the quality of service offered to its customers. However, commercial negotiations between small aggregator companies and large mnos, including the termination rates charged, reported by FCS members, can fail due to the larger commercial weight of the incumbents. Without an acceptable margin aggregators are unable to supply services and these services are not always replicable by the mnos themselves.

In this unbalanced situation when the demand for SMS services is increasing the regulator, Ofcom, should review the wholesale rates offered and provide a steer to the industry. Ofcom has appeared reluctant to intervene in cases of small players despite the fact that innovative services for business and consumers are at stake.

We recommend that the proposed Wholesale SMS termination review promised two years ago is commenced with haste. There is now information in the marketplace for Ofcom to conduct its work effectively, without requiring parties to issues a formal complaint to Ofcom.

Ofcom noted in its 2006 proposal that the French regulator has imposed a price cap on wholesale SMS termination of 3-3.5 euro cents. More recently the European commission proposes to cap charges for roaming texts at a maximum of £0.09. The European trend is price reduction and this should not be a reason to prevent innovative aggregators from entering the market.

Press reports on this issue can be found at:

<http://www.hs1sms.com/documents/HSL.EU.MNO.Abuse.20070307.pdf>

[http://www.theregister.co.uk/2008/09/23/eu\\_reding\\_sms\\_data\\_roaming\\_caps/](http://www.theregister.co.uk/2008/09/23/eu_reding_sms_data_roaming_caps/)

SMS is also an issue within the mobile number portability saga reported on page 3 of this response

While any mobile customer, business or consumer, would expect to be able to make voice and SMS calls after porting their mobile number to a new supplier, arguments against the inclusion of SMS within the mnp regime have been proffered by some mnos contributing to the delay in achieving mnp for new entrants in the UK.

**Recommendations to Ofcom:**

SMS must not be differentiated from voice within mobile number portability and Ofcom must clearly state its policy and implement where transgressions occur. We also recommend

- Ofcom should review the SMS market as regulation would seem necessary to remove the current market distortion where wholesale SMS is higher than retail pricing – For example the French and Spanish authorities have recently regulated the SMS termination market
- There should be an obligation similar to voice that covers the routing of SMS as this is a barrier to new entrants, e.g. the issues that new entrants have endured as there is currently no such obligation. (Obligation to Buy)
- Ofcom should allocate SMS short codes, in effect increasing competition in this market, as at present only BT can offer multi network short code SMS services.

**Appendix 3**

**May 2001**

**Response by the Mobile Independent Service Providers Group of the FCS to Oftel's  
Effective Competition Review: Mobile February 2001**

**Separate attachment**