

**Ofcom's mobile sector assessment- second consultation:
Mostly Mobile**

FCS response to the consultation issued on 8 July 2009

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1 Introduction

The Federation of Communication Services [FCS] is the UK trade association for the communication services sector representing businesses delivering products and services by means of mobile, fixed and broadband telephony and radio based services. Many of our members are active in the mobile market or wish to enter as mobile new entrants, MVNOs, dealers and distributors of product. A directory of FCS members may be found on the website- www.fcs.org.uk

The FCS welcomes the opportunity of responding to the second consultation within Ofcom's mobile sector assessment. This important consultation document provides welcome detail and commentary on the mobile landscape.

We preface our responses to the consultation questions with some comments on general principles of regulation within the UK mobile market.

2 Consultations

It would be helpful if Ofcom were to issue a timeline setting out when consultations, statements and changes in mobile regulation will take place. There are three mobile consultations running parallel at the moment and one that has recently closed. The conclusions from each might impact on our views on the conclusions of others. To clarify the situation we would like to ask for a clear regulatory framework for the mobile telephony sector setting out the timetable for decisions on:

- Mobile call termination
- Mnp and call routing
- The mostly mobile review
- Spectrum awards.

As each policy element is interlinked organisations cannot categorically state their views if the outcomes of one consultation are impacted by another to be published at a later date.

3 Mobile market review

However, Ofcom could have taken the step of a full market review. There has been change in the mobile market highlighted by the recession and a market review would have offered a crystal clear analysis and direction for the UK market as a whole, within which the subsidiary aspects of call termination, mnp, call routing and spectrum allocation etc could have been set. Continued regulation by Ofcom or where self and co-regulatory processes might be introduced could have been identified

The Digital Britain Report published in June 2009 has highlighted that mobile infrastructure as well as fixed line infrastructure is a utility. Proposed new legislation to extend Ofcom's powers to assess and report on the UK's communications infrastructure and its resilience demonstrates a rather belated recognition of this utility aspect. This refocus alone could have stimulated a comprehensive market review.

In addition, with the announcement of the proposed Orange and T-mobile merger on 8 September 2009 and the future reduction of national mobile networks to 4, there is even more reason for Ofcom to take a comprehensive review of mobile and its service delivery to individual consumers and UK business customers.

4 Mostly mobile

Ofcom sets out a view that future telecoms will be mostly mobile by revenue as the mobile sector comprises 51% of UK telecoms. However, when considering the high value of the mobile market account must be taken of call charges which have been inflated by the level of mobile call termination rates. Ofcom

itself, in the wholesale mobile voice call termination consultation in May 2009, estimates that termination rates contribute 14% of the total revenue from mobile to mobile or fixed to mobile calls; when these reduce the market value may also lessen.

In our view development of mobile must be by services at the retail level, which can only be fulfilled if there is open access to mobile network infrastructure.

We contend that future success in the mobile sector will be via competition, not between a shrinking number of national network operators, but between CPs who have access to the mobile infrastructure. The Orange and T-mobile merger has clearly demonstrated the limitation of network competition in the UK.

In reality business communications, for example, will continue to depend on high bandwidths, network security, resilience and call quality, which are more likely to be delivered through copper, fibre and to some extent IP based telephony. Mobile network congestion and “not spot” areas demonstrate the limitations of mobile telephony.

We can envisage a communications future of IP and fibre delivering telephony in balance with wireless access across the economy. Fixed mobile convergence will follow removing the need for separate regulatory measures. Migrations and number portability processes for example will need to appear seamless for the customer and in order to deliver this, work should commence within Ofcom now.

We contend that the future will not be “mostly mobile” but the future will be in “communication services” irrespective of technology or platform.

5 Competition

We remain of the view that Ofcom should do more to regulate access to networks.

The Orange and T-mobile merger is leading to a reduction in networks, which demonstrates the limited number of national infrastructure networks that are sustainable in the UK market, a message that FCS has continually urged Ofcom to address.

Clearly there is demand in the market for access to the mobile networks. The question is whether a reduction to 3 or 4 large network operators will stimulate access on fair and competitive terms to each of the networks by non infrastructure CPs on its own or should there be regulatory intervention to achieve this. FCS would not oppose the Orange and T-mobile merger if open access was the likely outcome through a separation of wholesale access from retail parts of the merged company.

Currently our members report barriers to entry to the mobile market through the terms and conditions of wholesale contracts which is in stark contrast to the ease of entry to the fixed line and IP markets.

We would expect Ofcom to review these outcomes regularly through market reviews, accepting that regulation can be slow to react but we would expect continued regulatory oversight of the market equilibrium.

In our responses to earlier mobile market consultations we have argued that the wholesale SMS market requires review and we believe that Ofcom should commence the delayed review to ensure that there is a suite of clear and unambiguous regulation covering voice and data.

6 New entrants

We are pleased that Ofcom has listened to the concerns expressed by FCS and new entrants to the mobile market and we welcome Ofcom's commitment to actively reducing barriers. However it would be valuable to understand how Ofcom proposes to carry out this function. Mobile new entrants, exemplified by the DECT guard band licensees, have over the past 3 years faced one hurdle after another - accessing mobile number portability processes to comply with GC18, high mobile call termination rates requested by incumbents in bilateral agreements and restricted access to roaming onto the larger networks all of which have combined to limit market entry and inward investment. Because of the asymmetry between a new entrant and an incumbent Ofcom could introduce a faster track response mechanism when addressing current and emerging hurdles.

7 Coverage

We support Ofcom's work to achieve roaming for 999 calls and believe this should be extended to national roaming between the networks to improve coverage in more areas.

8 Spectrum

We agree that spectrum suitable for mobile telephony technologies should be made available and we encourage Ofcom to ensure that access to that spectrum should be open for incumbents and new entrants alike, with spectrum packages designed to permit a range of licensees.

Ofcom has made reference to more spectrum being available for mobile telephony in this consultation and in doing so appears to identify that certain spectrum bands are suitable for certain uses. This logical outcome should be extended to other possibly more important spectrum users such as the Critical National Infrastructure.

9 Consultation questions

Section 2 – Introduction

2.1 Do you agree with our principles for mobile regulation?

We agree with Ofcom's principles but we believe that emphasis must be on sustainable competition in the delivery of services and less on the role of the utility networks and more on competition within the Communications Provider community and the IP sector.

Section 3 – The changing market environment

Q 3.1: Are there any additional sector trends that we should consider in our analysis?

We have noted above that Ofcom should carry out the wholesale SMS review promised some years ago

Q 3.2: Have we identified the right regulatory challenges?

In addition to a consideration of the economic viability of national networks and the reducing number of national network operators, Ofcom should be addressing how structural separation, a regulatory facility to be introduced within the revised European Framework, might assist the competition in the delivery of retail mobile services.

Section 4 – Competition and new entry

Q 4.1: We have outlined a number of factors which may affect the future market structure, including network sharing, spectrum and potential consolidation. Do you agree with this assessment, including risks and benefits that we have outlined?

Q 4.2: Do you see any risks to competition that we have not highlighted?

Yes- we believe that there are risks to competition as with network consolidation the continuation of vertical integration within networks will not effectively deliver the suite of mobile services, including innovation developed by mobile new entrants and resellers.

There are risks for new entrant operators seeking to enter the UK market unless Ofcom tackles effectively and in a timely manner the asymmetries between new entrants and incumbents and proactively puts in place methodology to address issues as they arise.

Q 4.3: Do you agree that a market review in the mobile sector (other than in the call termination market) is not currently required?

No- as we have discussed in section 5 above, we believe that a market review is now required. The review should encompass the requirements of business end users as well as consumers.

Q 4.4: We have concluded that competition in the mobile sector is currently addressing access concerns adequately. Do you agree?

We do not believe that Ofcom has considered fair and open access to networks adequately. There is pent up demand for access services, for example by CPs and resellers seeking wholesale agreements to add a competitive mobile offering to their product portfolio. That a market developed in GSM gateways in response to customer demand for ways of reducing mobile call charges, demonstrates that the market structure was not competitive.

Section 5 – Investment

Q 5.1: Do you agree with our assessment of investment in the UK mobile market and our priorities to secure future efficient investment?

We support encouragement of investment by communication providers and resellers as well as investment in infrastructure. As we have noted in previous consultation responses, investment in new infrastructure is limited but investment in system maintenance and development is crucial, with a fair rate of return derived from opening up access to the networks on non-discriminatory terms.

Section 6 – Consumer protection and empowerment

Q 6.1: Ofcom considers that regulatory intervention to protect and empower consumers continues to be needed in the mobile sector and that competition alone is not necessarily sufficient to secure this. Do you agree?

We support continued regulatory oversight of consumer protection, but in truly competitive market derived from open network access for a greater number of competing CPs and resellers, consumer protection will improve leading to reduced regulatory intervention.

Q 6.2: We believe that the approach we take to consumer protection and empowerment in the mobile sector strikes the right balance between taking timely action when necessary, and the need to apply regulation only when effective and proportionate. Do you agree?

We believe that concerns about call price transparency should be reviewed by Ofcom comprehensively across the technologies before fixed mobile convergence becomes more established.

Q 6.3: Are there any areas relating to mobile services that Ofcom is not currently addressing but which it needs to address in order to achieve its consumer policy objectives? Are there other areas where regulation could be scaled back?

Ofcom is looking at mobile mis-selling separately from its fixed line mis-selling project and similarly there are different projects for mnp and fixed line porting. As fixed mobile convergence becomes established customers will expect to have a seamless migration of their service between suppliers with similar customer protection measures. Only Ofcom can take the lead in bringing together these disparate processes into a single format.

Section 8 – Coverage

Q 8.1: Do you agree that our proposed facilitation role around mobile not-spot issues is a realistic and sensible thing to do?

Certainly commercially driven coverage can grow but network sharing, national roaming and interoperability with other networks [mobile new entrants, satellite and WiMax] need to happen; Ofcom may have to intervene if commercial arrangements are not concluded within agreed timescales.

Q 8.2: Do you agree with our general approach set out in the table above? Are there are any other actions we should take and why?

We agree with Ofcom's general approach except more emphasis should be made on supporting new entrants with a rapid response by Ofcom to failure of commercial negotiations.

Section 9 – Mobile content

Q 9.1: Are there any additional issues about mobile content and accessing content via mobile that should be considered?

We encourage the mobile market teams and Premium Rate Services, PRS, review teams in Ofcom to reach common conclusions on the definition of PRS and whether there is need for additional regulation over and above existing consumer law. As mobile services develop and payment mechanisms evolve there appear to be inconsistencies in regulation, as illustrated by some of the responses to the PRS scope review. In our experience labelling a service Premium Rate can adversely affect a market.

Q 9.2: We have set out some differences between accessing content via the fixed internet and via mobile. Are there any further differences?

We have no comments

10 Conclusion

There are many aspects of the mobile market that confuse consumers such as: why are there charges for an 0800 number call from a mobile when 0800 is supposed to be a freephone number? Ofcom could include such inconsistencies in a comprehensive mobile market review together with some of the issues raised by us in this response.

We would be happy to discuss our response with you should that be of interest.