



The Mobile Broadband Group

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Ofcom's Mobile Sector Assessment – Part II. Response from the Mobile Broadband Group

1. The Mobile Broadband (“MBG”, whose members are the UK mobile businesses of O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to provide comments on Ofcom’s Mobile Sector Assessment Part 2 (“MSA2”).
2. The MBG’s role is to work with the mobile operators’ external stakeholders to promote a regulatory environment that sustains a competitive market, while ensuring the interests of consumers are properly protected. The focus of the work is on issues where a better outcome can be achieved by industry working together, with a particular emphasis on self-regulation.
3. In recent years, the MBG has published codes of practice on:
 - Mobile content
 - Mobile location services
 - Responsible selling of mobile airtime contracts
 - Mobile Broadband
4. The mobile operators also actively participate in other co- and self-regulatory bodies. Among others, they are represented on the Committee for Advertising Practice, the industry panel of PhonepayPlus, the Internet Watch foundation and the UK Council for Child Internet Safety. Outside the UK, the mobile operators participate in a number of EU self-regulatory initiatives.
5. In responding to this consultation, our remarks relate to the sections that deal with topics within the remit of the MBG, particularly consumer protection and content regulation. We do not cover the sections that deal with primarily economic matters such as call termination rates and spectrum allocation.

6. As Ofcom notes in the sections on consumer protection and mobile content, the MSA2 refers out to other projects which are addressing the detailed policy matters. The MBG and its members are fully engaged in these discussions.
7. In this submission, therefore, the MBG is restricting itself to some very high level observations and themes that we believe Ofcom should be considering in relation to these sections of MSA2:
 - **Market failure:** Ofcom states in MSA2 that it will only intervene in matters where there is 'market failure'. However, Ofcom uses this term very loosely and does not describe what constitutes market failure in these contexts. In the absence of this, issues are dealt with in accordance with the availability of Ofcom resources rather than any objective test as to whether intervention is justified or appropriate.
 - **Empowering consumers:** Ofcom seems to believe that requiring providers to supply ever more information empowers consumers. The MBG argues, though, that Ofcom needs to have a much greater understanding of what consumer regulation is effective and how consumers could be encouraged to make much better use of the already extensive and diverse information available. MBG would recommend that Ofcom measure the effectiveness of the existing regulation that requires providers to make specific information available (specifically the requirement to make available Codes of Practice under GC14) to establish whether in reality regulating for the provision of information is effective in empowering consumers.
 - **Effective response:** The self-regulatory codes on content, location services and responsible selling have been demonstrably successful in either heading off potential problems or responding to emerging ones. Where the interests of economic actors are not in conflict, Ofcom has achieved the greatest impact through constructive dialogue with the mobile operators. Going forward the MBG and its members stand ready to continue this process of dialogue.

Market characteristics and 'market failure'

8. For the last twenty years, the mobile sector has been one of the most dynamic sectors in the global market. In that time adoption has risen from zero to around 4 billion users¹. In the UK, as Ofcom points out, 85% of inhabitants have a mobile phone and there are around 130 mobile phones in use for every 100 head of population.
9. The mobile ecosystem of device manufacturers, infrastructure suppliers, standards bodies, billing providers, network operators, content providers, value added service providers, distributors, retailers and others is complex and dynamic and has ensured that market evolution has been multi-faceted, non-linear and innovative. It bears little similarity to other consumer markets such as the supply of supply food, utilities, or clothing.

¹ www.gsmworld.com

10. At the heart of the ecosystem in the UK lie the mobile operators. The five 3G licensees serve in excess of 70 million mobile subscriptions² and employ nearly 40,000 people in their UK businesses³, significantly over half of which work in front line customer serving roles, either in retail or customer service centres, dealing with hundreds of millions of calls and contacts per annum.
11. The outlay represents an enormous investment in customer services – perhaps bigger than any other sector in the UK.
12. Moreover, as Ofcom acknowledges, the mobile market has delivered for the mobile customer, in terms of choice, value and innovation. Ofcom therefore has to justify its interventions on a case by case basis. To this end, Ofcom needs to be much more specific about what is meant by ‘market failure’ when proposing regulatory action. Ofcom tends to refer to complaints figures as a justification for action; however the levels of complaints in question don’t always appear to reflect market failure.

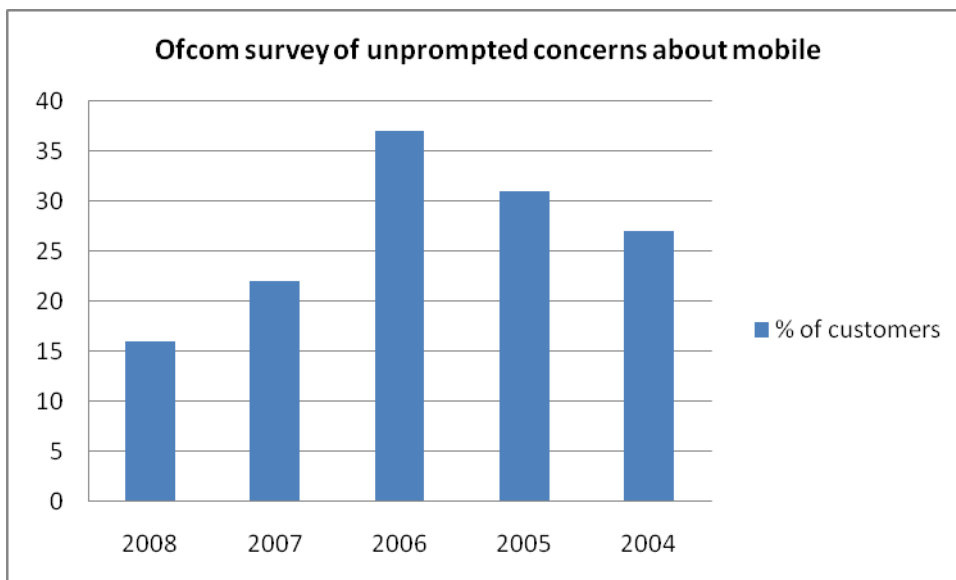


Table 1: % of mobile customers expressing unprompted concerns about mobile, taken from Ofcom’s Consumer Experience reports.

13. In 2008, the complaint numbers break down: 7% expressing concerns about signal, 7% about signal/coverage and 1% other (For 2007, the numbers were respectively 7%, 6% and 9% - 2007 was the year of ‘cashback problems’). In 2007 the Mobile operators acted decisively to address complaints arising from cashback and complaints fell dramatically.
14. Coverage and Pricing issues are largely economic and thus outside the remit of the MBG. In terms of the ‘Other’ category, where a range of issues are covered, it seems to the MBG that using less than 1% of the market ‘expressing concerns’ on any given issue is an

² Ofcom Communications Market reports

³ Source: Most recent Annual accounts filed at Companies House for UK MNOs. This figure does not include those that work for independent retailers.

extremely low threshold for which Ofcom has to demonstrate 'market failure' and could be used to rationalise intervention whenever it chooses or has the resources available. This cannot be acceptable or justifiable.

15. There needs to be a much more rigorous description of what Ofcom means by 'market failure' and analysis of whether a problem is persistent, incapable of resolution through market forces or self-regulation and of sufficient magnitude to justify intervention.

Empowering Consumers

16. The thrust of Ofcom's consumer protection regulation is based on the assumption that a well-informed consumer is empowered to make knowledgeable and rational decisions. By and large the MBG agrees with this.
17. Ofcom's response to date has mostly been to require market actors to provide more and more information to promote a well functioning market. Too much reliance has been placed on regulating information provision, on the assumption that consumers will use it, if it is there. There is not enough consideration of how and when a consumer will use information on a given topic. The MBG is pleased that Ofcom is starting to reconsider this approach (for example, the re-evaluation of the provision of quality of service information in its current form is welcome, in recognition of the fact that it was not being used by the general public.)
18. There is a growing amount of comparative information in the public domain to ensure that lack of information is not an inhibitor to a well functioning market. Ofcom research reveals that 90% of consumers have access to at least one trusted source of information about the mobile market⁴.
19. Going forward, more emphasis should be placed on encouraging people to use those sources of information – both formal (operator and third party) and informal - rather than regulating the provision of yet more information by telecoms providers. Ofcom also needs to take stock of the regulatory information which is currently required of the operators to assess whether this is doing what Ofcom intended it to do, or whether there are more effective means of providing information (if additional means are needed at all).
20. Promoting media literacy and digital participation is clearly key to this. Customers that are able to use the Internet have an advantage over those that don't, where it is easier to obtain informal (through social media) and formal information (through, for example, price comparison web sites).
21. Consumer policy should reflect the widely recognised shift in power from producers to consumers that the Internet has delivered and promote the potential for all consumers to leverage this power on an equal footing by encouraging greater use of all the sources of available information.

⁴ P103, Ofcom Research Report: The Consumer Experience 2008

Effective response through dialogue with the mobile operators

22. In relation to child protection, consumer protection and similar issues, the mobile operators have a demonstrable track record of acting responsibly either to head off potential problems or to respond to emerging issues, when the situation so demands. We also have a demonstrable record of being willing to engage on these issues with external stakeholders: regulators, government, the European Commission, other industry players, NGOs and consumers.
23. For example, in 2004, the MBG published the UK Mobile operators' code of practice for mobile content. It was the first of its kind and was used as a basis for similar codes throughout the EU. We fully engaged with Ofcom's independent review of the Code in 2008 and were pleased that it was found to be an example of effective self-regulation. We were also pleased that Ofcom's recent research confirmed that children were not obtaining inappropriate content via their mobile networks⁵. The MBG will be considering the other findings of this research (e.g. the finding that young people want more advice about privacy) in due course.
24. As a further example, in consultation with the Home Office and children's charities, the MBG published a code on mobile location services. This has been effective in ensuring proper use of such services. Mobile location is moving to other technologies such as GPS (which is outside the control of the mobile operators). Nevertheless, we expect that the principles of the code will have set a benchmark which services on other technologies can follow. Discussions are currently under way about how best they can do this. In due course this may lead to an alignment of how all location services are operated in the UK.
25. In the realm of micro payments, the mobile operators have also been very active in self-regulation, often using its ability to act more quickly than formal regulation to introduce new rules in response to emerging problems (for example the 'STOP' command for subscription services was initially introduced by the mobile operators and later formally adopted by PhonepayPlus). The Payforit mechanism has also been developed as an alternative to PRS to address some of the shortcomings of the latter mechanism.
26. With respect to access and inclusion, the mobile operators, in collaboration with others, will be piloting a service aimed at allowing customers who are deaf, hard of hearing or speech-impaired to be able to access 999 services through texting (SMS). Also, in response to a request by ACPO, the facility allowing customers to be able to make 999 calls on any UK network (often called '999 roaming') will be re-enabled in the UK.
27. Finally, in dialogue with Ofcom, the mobile operators published in 2007 the code of practice on responsible selling of mobile airtime contracts and, in 2008, the code on marketing and promoting mobile broadband. The code and action taken by the mobile operators on sales and marketing practice had a dramatic impact on the complaints being received on 'cashback'. We fully expect the code on mobile broadband to promote an orderly, competitive and successful market for those services.

⁵ <http://www.ofcom.org.uk/consumer/2009/09/young-people-want-advice-about-online-privacy/>

28. The MBG agrees with Ofcom that a consumer's best protection is delivered by a well functioning market. When it's as fast changing and diverse as the mobile market, everyone, including operator staff and customers, are presented with particular, perhaps unique, challenges. In our experience the most effective public policy outcomes in these areas have arisen from constructive engagement with interested stakeholders and the MBG remains committed to engaging with Ofcom and others to address any emerging challenges through open dialogue.