

19th April 2006

FAO Claudio Pollack, Ofcom

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Dear Mr Pollack,

Response to Consultation on Ofcom's Consumer Policy

Introduction - Ofcom's Approach to Consulting with Citizen Consumers is Abusive, Cynical and Rotten at Its Very Core

In my position as a mere citizen consumer (and unlike Ofcom I do not draw a distinction between those two things since in terms of telecommunications products I find that I am usually both of those things at the same time even though a minority of uk telecoms consumers will clearly not be uk citizens in the conventional legal sense) this will be something like my 8th or 9th response to an Ofcom Consultation document in the last 12 months or so and strangely I feel drawn almost like a moth to the flame to waste yet more of my time in one final attempt to point out to Ofcom all that is wrong in its currently morally bankrupt approach to protecting the uk citizen consumer.

This approach is fundamentally flawed from stem to stern and having already tried to engage with Ofcom by responding to 8 or 9 previous long interminable, verbose and excessively complex consultation documents on what are at their core simple policy issues I and fellow telecoms campaigners by now know only too well that all time spent in responding to Ofcom consultations is in fact completely pointless and unproductive except to the extent that those responses are published on the Ofcom website. So it is perhaps just conceivable that they may be read by someone outside Ofcom who may take an interest in one's comments (as certainly the staff at Ofcom do not and they must instead just have a good laugh about any responses from the public that go against the policy they are proposing and had already made up their minds on before then ignoring those consultation responses entirely) and may provide some useful feedback on how to make any headway in tackling the relentless Stephen Carter and David Currie driven Ofcom Board steamroller. This steamroller only in fact appears to bother to issue consultation documents so as to go through the motions of saying that Ofcom values the opinions of the general public but as we have seen with today's Ofcom Statement on Number Translation Services Ofcom rarely ever listens to what the public wants and mainly listens to what Mr Carter's important former business colleagues and cronies in the telecoms industry tell him and especially their repeated pathetic pleas that their latest elaborate scheme for fleecing the general public (when all the public in fact needs to do is to make a simple telephone call to a company they are a customer of as cheaply as possible) are in fact apparently vital value added services and a crucial part of the uk economy that cannot possibly now be eliminated. The argument that its just a telephone call and why should people pay six or fifteen times as much for that telephone call as a call to another more ethical company or organisation offering normal phone numbers cuts no ice with Mr Carter and his telecoms industry cronies. Instead Mr Carter and his friends simply repeatedly claim that the market is fully competitive and so that consumer choice will ensure that only the best and most consumer friendly companies survive.

Unfortunately such claims are a total lie in an environment where BT still has Significant Market Power in controlling the uk telecoms marketplace and where Ofcom grants privileged access to it for confidential discussions by all the leading telecoms companies to enable them to help form a regulatory framework that is mainly to their commercial benefit and to the complete disbenefit of many uk citizen consumers.

What Should Be Ofcom's Job in Protecting Citizen Consumers vs What The Telecoms Industry Lobby Has Decided Should In Fact Should Be Its Role?

Section 3(i) of the Communications Act 2003 says "it is Ofcom's principal duty in carrying out its functions:-

To further the interests of citizens in relation to Communications Matters: and

To further the interests of consumers in relevant markets, where appropriate by promoting competition

Fine sounding sentiments but unfortunately completely subjugated by the cynical and self serving board directors of Ofcom in favour of a preference for taking more notice of other parts of the Communications Act 2003 (but which are not its principal duty) which talk about not regulating excessively or disproportionately or so as to impose a burden on telecoms businesses developing new products, services etc, etc. I don't have a copy of the Communications Act 2003 to hand but I know that is the gist of the mantra that the sharp suited, very well paid senior executives at Ofcom follow in justifying why they in fact do not in general meet directly with citizen consumers and instead much prefer to operate through carefully manipulated so called market research where questions are asked to randomly selected and generally telecoms uninformed ordinary members of the uk public in such a way that they will almost inevitably only be spun into answering them in the way that Ofcom prefers.

Of course occasionally some annoying and particularly diligent consumer activists such as those involved in the www.saynoto0870.com website actually track down one of Ofcom's obscure impenetrable 100 to 300 page consultation documents hidden in the depths of its website and actually manage to summon up the energy to respond telling Ofcom they have got it totally wrong and what they should be doing. But unfortunately as we have seen in today's Statement on Number Translation Services when 1,000 annoying and meddlesome mere citizen/consumers stick their noses in where they were not wanted Ofcom then had a backup plan of then simply ignoring all the views expressed by the public that it did not want to hear and simply proceeding with its original plans regardless.

In fact worse than that is the fact is the fact that Ofcom's thinking is not joined up or even vaguely coherent so that one Ofcom team led by Clive Hillier is stubbornly insisting on a totally inadequate and insufficient remedy on NTS of just some 0870 calls being geographically priced whilst another team led by Andy Montaser in fact knows that this won't work and so is instead working on revising the National Telephone Number Plan to include a new countrywide series of 03 numbers which can only be charged at geographic rates to which all call centres (especially 0845 call centres) who do not want to ripoff their customers will have to migrate and get new numbers on. The subliminal text is that the profitable 084/7 telecoms empires of all Mr Stephen Carter's good friends in the telecoms industry must not be allowed to be decimated overnight and nearly all of the 084/7 scams must be allowed to continue as before on the same and/or new 084/7 number variants while the few really annoying purist government call centres or worse still (from a telco perspective) ethically motivated private sector businesses (eg John Lewis or Nationwide) who insist on not fleecing their customers can jolly well face the inconvenience of getting a new 03 phone number instead. Now you might have thought that it would have been those abusing the customer by inappropriately using 084/7 numbers at a covert premium rate who would have had to get a new phone number and that Ofcom might have implemented a system as simple and coherent as the North American Telephone Number Plan (www.nanpa.com) but no that would be bad for telecoms businesses and so in Ofcom's confused and telco industry biased view of the world not in the best interests of citizens or consumers. Now I personally can't see any difference between those two groups but I would find it hard to imagine that Ofcom's solution is in the best interests of any citizens and as a consumer of phone services to these numbers I can state categorically that it is not in my best interest.

Ofcom's Touching and Naïve Faith in an Imperfect Market and Lack Of Adequately Tough or Widespread Enforcement Action Leads to More and More Scams Rather Than More and More Consumer Choice

At the heart of what I do not agree with in Ofcom's approach is its ridiculous assumption that the telecoms marketplace is full of mainly fine upstanding morally upright companies committed to delivering the best quality products to consumers and in the market for the long term so that they will not want their reputation to be damaged by overpromising and underdelivering or even by plain old fashioned commercial trickery and relying on only delivering customers the minimum of what is in the small print of their customer contracts (eg a 12 or 18 month penalty charge clause for leaving a poor quality broadband service early) rather than what is in the headlines of their commercial marketing material.

Yet Ofcom's various own initiative investigations have shown that there are telecoms service providers out there who do in fact set up on a get rich quick basis, totally ignore the requirements to set up an Alternate Dispute Resolution procedure and yet get away with it for a long period of time until Ofcom gets enough complaints that it thinks the issue may be worth taking seriously. In fact at the present time Ofcom still refuses to take seriously the many consumer complaints it has received about the Finarea group who operate a variety of indirect access and dial through calling brands (eg 18866.co.uk, 1899.com, dialaround.co.uk, bestminutes.co.uk and so on) that have registered uk subsidiaries but that refuse to join an Alternate Dispute Resolution Procedure and ignore all customer emails complaining about their service. But what does Ofcom do - well so far nothing - apparently unless thousands of customers complain about something Ofcom considers the lack of an ADR and unresolved customer complaints by a telecoms provider doesn't matter. In other words Ofcom is inherently biased in favour of giving telecoms providers an easy life and the benefit of the doubt.

Why Does Ofcom's Approach to Regulation So Consistently Fail to Promote Competition and the Best Interests of Consumers

The reason why normal market driven competitive forces do not operate in the relatively open, healthy and free way that they do on say the cost of a litre of petrol or the price of a loaf of bread is a simple one. The reason is because most relationships with a telecoms company do not involve paying for services on a transaction by transaction basis as you go as you would with petrol or buying a sandwich and a Coca Cola from a Tesco Express. Instead most relationships with telecoms companies rely on a monthly or quarterly billing cycle for phone calls and line rental and broadband charges in arrears and customers then making payments by inertia through direct debit.

In short the main reason that competitive forces in telecoms do not work to the consumer's best interests is because the products are not simple and consumers frequently do not know how much they are paying when they decide to make the next purchase. OFTEL and Ofcom's repeated failure to ensure compulsory call price announcements on all phone calls for customers who want them on the pathetic and clearly inaccurate excuse that it is too complicated or expensive for Telcos to do seems to be a clear example of how the regulator pays lipservice to harnessing competition to the consumer's benefit while in fact having a quite opposite agenda.

If Ofcom wants competition to work in the best interests of consumers it must actually intervene regularly to ensure that all pricing of telecoms products is fully transparent to the consumer at all times and to make illegal long term contractual lock ins with substantial penalty charges for early cancellation. The current "free broadband for life" promotion from TalkTalk is yet another clear example of unfair contract terms in a promotion that will leave customers agreeing to those contract terms in ignorance and then unable to exercise free market choice by leaving the service if they find the quality or reliability of the broadband is unsatisfactory. If TalkTalk were confident in the quality and value of their broadband and telephony service and that no one would want to leave it there would surely be no need for them to lock customers in for such a long period?

Better Services for Consumers Through Competition Means Total Price Transparency and an End to Unfair Contract Terms

If we examine all that is wrong and distorted in competition in the UK marketplace and that prevents competition having the results one might hope for all of it revolves around the existence of products with low headline prices for signing up and then long contractual lock-ins where the consumer cannot exercise free choice if they get bad service.

On mobile phones we see it almost everywhere in the contract mobile phone market where mobile phone shops are allowed to tell customers that a phone that in reality costs £200 or more is free to them or only costs £9.99 to buy so long as they sign here on the dotted line to be committed to paying £35 a month for the next 12 or 18 months to that company. So unlike buying a DVD player or a washing machine the choice is not simple when making a purchase and the consumer cannot easily make a rational or informed choice. That is precisely when competition is no longer effective in ensuring that the market actually delivers services that actually give the customer the best possible deal.

We see the same unhelpful approach by Ofcom in terms of cross network roaming for UK based mobile phone customers on to other mobile phone networks. In essence Ofcom does not require any of the four 2G networks to grant roaming access to their competitors in areas where they have lack of adequate network coverage or capacity on their own transmitters and so a customer who finds he has made a bad choice of network for the area he lives in or the car journey that he regularly makes cannot exercise free choice by using his phone to access GSM phone services on a rival network but is stuck with continuing to accept the bad service for 12 or 18 months. But if each network's customers could roam on to a rival network in an area where its own network was deficient then that network would have every possible incentive to improve its own coverage blackspots. It baffles me as to why a mobile phone customer has to do the equivalent of signing an annual contract only to be able to fill up at say Texaco Petrol stations and then if he needs petrol when he is closer to an Esso or Shell filling station he cannot have it. But this is the crazy situation the OFTEL and now Ofcom have allowed to grow up in UK mobile phone roaming.

Similarly with broadband Ofcom allows companies to get away with marketing major advertising headlines suggesting free broadband for life and only £10 per month for phone calls etc which gullible and less well informed customers will then be pressed in to signing up for by high pressure salesmen only to discover later that they are denied any affordable choice to move elsewhere if the service is bad.

Ofcom's Total Failure to Ensure The Creation of A Regulatory Framework Where the Customer is King & Can Exercise Free Choice - Wholesale Line Rental A Classic Case

All the time Ofcom allows the invention of new Non Geographic Number telephone products (or more elaborate scams as we telecoms consumers often prefer to see them) which it hails as a great success in further diversifying customer choice and the marketplace.

A classic example of such a case is the introduction of Wholesale Line Rental products in conjunction with Ofcom's signing off of BT forcibly enslaving millions of its customers on the lowest level of what was originally supposed to be an optional line rental discount scheme (BT Option 1 on BT Together which is now the compulsory minimum form of BT fixed line rental for most phone customers outside cable phone areas). The net result of this is that for less well off households who do not meet the requirements for joining BT's Light User/In Contact Plus Schemes (which are not in fact designed for those on low incomes at all but merely only for those who do not use a landline very much at all and also who bizarrely are not even allowed to own any form of mobile phone either) the minimum BT line rental has been allowed to rise by Ofcom in 18 months from just over £22 (£28.50 on the old BT Standard tariff minus a quarterly calling allowance on 01/02 calls of nearly £6.50) to a current wallet busting £33 per quarter (with no free calling allowance) - an increase of nearly 50% in 18 months. Under these arrangements lazy BT customers who fail to route their calls with another cheaper calls provider are in effect being subsidised by Indirect Access and CPS customers who now have to pay an even higher line rental to subsidise the cost of a call discount scheme for BT customers that they do not use. How Ofcom could have allowed this

is utterly beyond me although I suspect that certain senior Ofcom employees having formerly worked at BT may have had something to do with it.

Ofcom's alleged justification for all this is that there is now Wholesale Line Rental even in country areas and that we can get cheaper phone line rental by going to another company than BT. But in practice all of those other line rentals are only £1 or £2 a quarter at most cheaper on the basic line rental than BT and in fact for most customers end up costing more as BT only offers its free of charge Caller Display deal to its own BT Privacy customers while it also only sells its own customers its other network services like Call Diversion, Call Waiting and so on in a discounted rate four network services pack while still charging the full price for each of these network services when they are delivered by a rival wholesale line rental operator. In other words yet another excuse for scamming the customers has been handily allowed by an incompetent regulator who seems to have far too many overpaid staff who are all too ready to believe the PR puff of their own press releases about how great Wholesale Line Rental is but clearly never paying their own phone bill or witness the actual practical effects for those who take a WLR product.

Also Ofcom's criteria in evaluating the success of Wholesale Line Rental is quite wrong as Ofcom, ever the master of spin and smoke and mirrors, is evaluating the success of Wholesale Line Rental on the basis of the number of customers signing up to it under an extremely hard sell campaign by high pressure salesmen at CarPhoneWarehouse group shops, rather than by evaluating whether the average cost of line rental and network services combined paid by the average uk phone customer is now falling or rising. I still find it impossible to understand though why my metered gas, water and electricity standing charges are only £5.50 to £11.00 per quarter while my phone line rental is now a whopping £33.00 per quarter on top of which I pay another £45 per quarter for broadband. And even though I would happily axe my PSTN phone line rental in favour of a Naked DSL only phone line connection and Voip only telephony Ofcom refuses to make this possible for me as it will not force BT Wholesale to offer a Naked DSL option in the many rural parts of the uk where the only landline phone connection is physically on the BT Wholesale (OpenReach) network. Ofcom touchingly thinks that market forces may one day deliver this option to me without it intervening in any way though?!

Why I and Other Consumers Who Have Attempted to Engage with Ofcom No Longer Have Any Faith In Its Ability to Protect the Consumer

Ofcom's dismal failure to improve life for the end consumer over its telco profitability centric but non customer benefiting Wholesale Line Rental system is entirely symptomatic of an organisation wide problem with Ofcom. That problem is that the regulator is far too heavily staffed with former senior commercial people from the telecoms world and as far as I and other consumers are concerned it is an organisation hijacked by a fleet of poachers turned gamekeeper from the telecoms industry and who intend in many cases to return to that same commercial world in due course. As a result of this these regulatory staff do not make regulations and create market structures that create the very best possible deals for consumers but rather only one which ensures the most benign operating environment and the highest share prices for telecoms companies. And although it will of course be said that OFTEL and then Ofcom has done much to clip BT's wings and reduce its profitability my major criticism is that it hasn't replaced it with a better and fully competitive marketplace.

Surely it isn't too much to ask that a huge range of unfair contract terms where customers have no idea of what they pay for a service (of which a Pay As You Go mobile service with no access to either online or any other form of call billing information by Vodafone is just yet another of the many examples of elaborate telco scams that Ofcom allows to continue to operate in the so called name of non intervention) are made illegal by Ofcom and that the range of contract terms that can be offered by telecoms companies are limited and simplified so that those companies will mainly be competing fairly on price rather than by suckering consumers in to a too good to be true deal that looks cheaper than it actually is because of hugely unfair contract terms which the almost utterly useless, telco centrically focused regulator who conducts most of its negotiations in private and only with the telcos has once

again failed to stop. Surely it isn't much to ask for Ofcom to outlaw these various unfair contract terms if consumers are to actually get a better deal but it does however seem to be far too much to ask of the elusive and apparently consumer shy Mr Stephen Carter who perhaps fears that he would not then be offered another nice appointment at say £1 million a year in the commercial sector if he suddenly changed his spots by embarking on a truly pro consumer and pro real free market Ofcom competition agenda. In my book allowing competition through an elaborate range of telecoms scams does not amount to free competition but clearly in the book of Mr Stephen Carter and his fellow Ofcom board members it does.

Conclusion

In summary I do not believe Ofcom is serving the best interests of uk consumers in the telecoms arena in almost any respect and instead it is rearranging the regulatory furniture in a way that is in the best interests of the profitability of uk telecoms companies while being dressed up to look as though it is free market competition.

Due to Ofcom's almost total failure to ever put the interests of the consumer first in its rule making in favour of its business cronies there is almost no adequate price transparency in the uk telecoms marketplace and a widespread use of unfair, restrictive and anti competitive contract terms over which there would be blood on the pavement and revolution in the high street if anyone tried to apply them to other more traditional areas of retailing.

In my view Ofcom is so unfit to act in the best interests of the consumer that I would strip it of its powers to be responsible for competition and fair trading issues in the telecoms industry and return them to the Office of Fair Trading who have shown recently that they are far more capable of acting in the best interests of both uk citizens and consumers without embarking on an artificial separation of the two in order to try and disguise what is in fact a total failure by Ofcom to act in the best interests of either uk citizens or uk consumers.

I and other telecoms campaigners are weary of repeatedly responding to Ofcom and its consultations and having our views then resoundingly ignored. If Ofcom and its overpaid and cynical senior management does not mend its ways soon then the only way to reform it will be to abolish it in favour of a new strong consumer led regulator that actually has the teeth to deal with the many and frequent scams and consumer abuses to which the current structure of the telecoms industry and telecoms billing processes so readily lend themselves.

Yours sincerely,

Cllr Julian Shersby
Mole Valley District Cllr for Capel, Leigh & Newdigate

19th April 2006