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10 October 2008

Dear Alan,

REVIEW OF ALTERNATIVE DISPUTE RESOLUTION AND COMPLAINTS HANDLING PROCEDURES

Please find enclosed our response to the above consultation. We have enclosed both a confidential and a non confidential version for ease of reference.

If you have any questions or would like to discuss our response please do not hesitate to contact me.

Yours sincerely,

Julie Minns
Head of Regulatory and Public Policy



REVIEW OF ALTERNATIVE DISPUTE RESOLUTION (“ADR”) AND COMPLAINTS HANDLING PROCEDURES

Response from Hutchison 3G UK LIMITED (“H3G”)

Introduction

1. H3G was the UK’s first 3G network offering national coverage for calls and texts, and has over 90% population coverage for 3G broadband services. As we consolidate our radio access network with T-Mobile we expect to reach almost universal UK population coverage for 3G by the end of 2009. H3G have over 3 million active customers in the UK and the Hutchison Whampoa group over 16 million 3G customers worldwide.
2. H3G welcomes Ofcom’s finding that the *“current regulation of ADR and complaints handling procedures is successful in many respects”*¹, and we support and encourage Ofcom in its aim of furthering the consumer interest.
3. H3G were licensed by the UK government in 2000 specifically to stimulate competition in the mobile market. Ofcom is aware that H3G has been at the forefront in developing innovative mobile products and services. We have embraced products such as Skype and IM seeing them as complimentary to our services rather than competing with them. We have brought value to the market, simplified pricing and led the market in delivering mobile broadband.
4. Ofcom will also be aware of H3G’s concern that some aspects of the existing regulatory framework distort competition, and limit H3G’s ability to continue to deliver innovation and value to the UK consumer.
5. Therefore whilst H3G supports some of Ofcom’s proposals outlined in the consultation document, H3G is concerned that the focus on revising a complaints procedure that Ofcom acknowledges is largely successful, without addressing the fundamental competition issues such as reform of the Mobile Termination Rate regime, effective Mobile Number Portability and competitively neutral spectrum liberalization, will fail to further the wider interests of citizens and consumers.

¹ 1.4 of the consultation document “Review of alternative dispute resolution and complaints handling procedures”, 10 July 2008.



6. Ofcom is charged with a dual duty in relation to furthering the consumer interest, and H3G is concerned that Ofcom is focussed solely on furthering the consumer interest by revising and introducing new consumer protection measures whilst neglecting its duty to further the consumer interest by promoting and encouraging competition. H3G therefore urges Ofcom to evaluate whether the resource being devoted to revising and reviewing existing consumer regulation would not be better deployed to creating a level playing field in the mobile market by properly resolving the issues of MTR, access to spectrum and MNP.
7. More broadly we think it is essential that Ofcom understand why consumer dissatisfaction, if real and avoidable, is not being addressed by competition. Under such an approach Ofcom would focus on areas where it is inevitable that competition will not deliver for the consumer - such as MNP. Ofcom should be reluctant to intervene unless it can explain why competition is failing to deliver effective consumer outcomes.
8. **Summary**
 - Although H3G does not object to defining a 'complaint', H3G does think this will be problematic to give effect to and strongly disagrees with the inclusion of 'faults' within the definition of a complaint
 - H3G believes the requirement to inform all customers of their right to go to ADR if their complaint is not resolved on first call is not proportionate and will increase costs to communications providers which will in turn be passed on to consumers.
 - H3G disagrees with the proposal to acknowledge complaints in a durable format within five days of a complaint being made.
 - H3G does not object to reducing the period that must elapse before a complaint can be escalated to ADR from twelve to eight weeks.
 - H3G questions why Ofcom believes it is necessary to prescribe a single route of free access to customer care across the entire communications industry where other routes might be more efficient and preferred by customers.
 - H3G believes the cost of revising systems so that complaints can be recorded and stored in a standardised format is disproportionate and that the proposed timescale for implementing this is unrealistic.
 - H3G supports a principle based single code of practice for complaints handling and dispute resolution.

Definition of a complaint

9. H3G is concerned that Ofcom's proposed approach may be counter productive for four reasons: Ofcom's approach creates uncertainty; the approach cannot keep up with rapid change in products and services and therefore mitigates against innovation; it



does not address the underlying causes of consumer dissatisfaction; it penalises operators for issues which are beyond their control.

10. H3G disagree with the inclusion of 'fault' within the definition of a complaint. A customer contacting H3G about a fault may not be dissatisfied, but the automatic inclusion of faults in the definition means that it must be logged as a complaint. In addition H3G's complaint levels could be adversely affected by a manufacturer fault which H3G cannot resolve.
11. By its very nature a customer reporting a handset fault is likely to have to submit the handset for analysis unless the advisor is able to solve the problem by talking the caller through some basic diagnostic tests. It is unclear whether a request to the customer to submit the phone for testing/repair is a resolution on first call or whether it is an escalation and therefore the customer must be notified of ADR within five days and receive a written acknowledgement.
12. In addition, if it is the latter then the clock for referral to ADR starts before H3G understands the technical complexity of the fault, or whether in fact a handset can be repaired. This could mean that H3G are liable for case fees for the investigation of complaints where the handset is unable to be repaired. In practice this is unlikely to give the consumer an effective remedy.
13. Furthermore during the investigation it may be found that the fault has arisen due to the customer's own actions (water penetration being a common cause) or a manufacturing failure. H3G would not be legally responsible in either event and yet the consumer would be led to believe that they could take their complaint to ADR if they were unhappy at being told that they would have to pay for a repair. Again H3G might have to pay case fees for complaints that it could never resolve and simply create the wrong impression for the consumer about what the operator can and cannot do.
14. Mobile is a complex product / service which is becoming more complex not less as mobiles are used for more and more things. Differences of opinion are likely to increase as mobiles become more important to consumers and do more things. It is therefore inevitable that more disputes will arise as innovation proceeds, and mobiles more capable and consumers more reliant on the service. Some of the issues may lie outside of the responsibility of the mobile communications provider, and yet under the proposed wording H3G and other mobile networks would have to record these in their overall complaint statistics. As such overall complaints statistics would be a misleading indicator of the performance of that mobile network but may instead indicate that it is offering more complex and innovative products than its rivals.



Informing customers about ADR

15. H3G disagree with the proposed requirement to notify customers of ADR within 5 days of complaint being received. The cost and resource impact associated with this requirement is considerable and is not – as Ofcom assert – proportionate to *“the benefit that consumers and citizens will receive”*. H3G are very concerned that Ofcom’s impact assessment relies on averaging the cost across the entire sector and assessing this against the total revenue in the sector. As the smallest mobile network with considerably lower revenues than our competitors, H3G will be disproportionately impacted by this proposal.
16. H3G is concerned that the consultation document makes no reference to the other forms of redress open to consumers in the communications market. These include resolution through the small claims court and via Trading Standards or simple non-payment and moving to another operator. By omitting to mention these forms of redress Ofcom is proposing to introduce new requirements on CPs to improve consumer complaints handling without comprehensively assessing whether consumers in this market are currently poorly served or seeking to understand if those routes do not serve customers' needs, why they don't.
17. Ofcom should also be aware that the estimates of costs provided in response to the S135 request by the communications providers were done so on a voluntary basis and the information provided may not provide an accurate or complete assessment of the total cost. H3G would urge Ofcom to recalculate the costs associated with this provision before any decision is taken to proceed with the proposed regulation.
18. Ofcom's impact assessment fails to consider the adverse impact on consumers who will have to bear the cost arising from the introduction of the new systems and the increased cost that may arise from increased awareness and referral to ADR.
19. H3G is concerned that some customers knowing that they can take their complaint to ADR within 8 weeks and knowing that H3G would have to pay a case fee will use that to either delay coming to an agreement or will actively use the knowledge that H3G will incur costs should the case be investigated to pressurise the advisor into making an increased gesture of goodwill. This is not an appropriate use of ADR and H3G would welcome proposals from Ofcom as to how Ofcom believes this eventuality can be prevented. H3G would be happy to discuss with Ofcom instances of where consumers already use their knowledge of ADR to increase the resolution offer being made by H3G.



20. After the complaint is received H3G's current process is to telephone the customer to discuss a resolution. H3G will use all the telephone numbers provided by the customer and will attempt to contact them – leaving messages – on three occasions. If after the third call we have been unable to contact the customer, H3G closes the complaint. Under the proposals that customer would by then have been notified of their right to go to ADR and be made aware of the 8 week referral deadline. H3G would welcome clarification as to whether a customer who has not responded to repeated calls from their CP should still have the right to go to ADR on the same basis as the customer who has genuinely engaged with their CP but agreement has not been possible. In both instances case fees would be payable by the CP without any obligation being placed on the customer to try and actively reach an agreement. Does Ofcom believe that every customer should have the same right to take a complaint to ADR regardless of whether they have attempted to reach an agreement with their CP, or does Ofcom feel that the new proposals may require some adjustment in the criteria against which the ADR provider can accept the complaint?
21. H3G notes Ofcom's research shows a low awareness of ADR, 15% of consumers are aware of at least one ADR scheme. However the research also found that 42% of consumers were aware of their mobile operator's complaints code of practice which includes details of the ADR scheme. Would it not then be more proportionate to build on existing awareness of the complaints code of practice rather than introduce a new requirement to notify customers about ADR?
22. We would welcome clarification on 3.65 of the consultation. 3.65 says that should the customer contact their CP about the same issue again then the customer should be notified of their right to go to ADR. However, it might be that on the second call the complaint is resolved, therefore what is the purpose in informing the customer about their right to go to ADR? It might also be the case that the problem has repeated itself but the same resolution that was offered first time again resolves the complaint. It is unclear why then the customer would need to be told about ADR.
23. Furthermore 3.65 says that the right to go to ADR for a repeat issue is calculated from the time the complaint is made. Is that the first or second contact for this purpose? If the first then is it Ofcom's intention that the customer who made their first call in January and their second call in March should be told they can immediately refer the issue to ADR? This would seem illogical and H3G would welcome some clarification as to what is meant here.



24. 3.40 of the consultation document states Otelo require members to include details of the ombudsman on customer bills. This is incorrect. H3G understands from Otelo that Ofcom were told this was not correct prior to publication of the consultation. H3G requests that in making their final statement Ofcom make clear that Otelo do not require this of their members.
25. H3G requests clarification as to how pre-pay customers, who have not registered their details and may not wish to provide contact details, should be sent notification of ADR in a durable format. Should Ofcom proceed with this requirement then H3G would ask that Ofcom consider permitting mobile operators to notify their customers by the medium most appropriate to their service, in this case we believe this would be SMS. We question the assertion in the consultation that text messages are difficult to store. Almost without exception all mobile handsets have the ability to store SMS in a specific folder on the device. Some handsets also allow the customer to sync with a PC and would allow them to print off their SMS if they wished to have a hard copy.

Complaints handling process

26. H3G already provides more than one free route of access to its customer services. H3G longer term strategy is to reduce costs by reducing the calls to customer service by encouraging self service and discouraging calls to our contact centre. A new regulatory requirement on free routes of access would further limit H3G's ability to establish practices and procedures that it believes are efficient - consumers can after all choose between 5 operators and many 100s of MVNOs in the UK.
27. H3G questions why Ofcom is proposing to require free access via one communications method (voice) when it is charged with a duty to regulate on a technology neutral basis. ISP and mobile customers may prefer communication by text or e-mail, but would be forced to pay in their overall charges for the provision of a free voice call service. In addition customers may be driven towards an IVR system which may be less consumer friendly than other methods of interaction. H3G would rather Ofcom enable communications providers to determine the most appropriate method by which their customers can interact with customer services rather than prescribe a standardised route across the entire sector.
28. There is considerable innovation in the communications sector which is enabling consumers to interact with their provider by a variety of means, for example H3G enables customers to check account details, adjust settings and purchase services via My3. Such innovative developments are not assessed in the consultation and consequently H3G does not believe Ofcom has fully assessed whether consumers



require the prescriptive approach to complaints handling and customer care provision that is suggested.

29. H3G also questions why Ofcom believes such a prescriptive approach is necessary in a competitive market where consumers, for whom voice access to customer services is important, can factor this into their decision as to which provider they wish to subscribe to.
30. In 'responsive' under section 4.57 of the consultation, the second bullet states that the CP must acknowledge the complaint in writing within five days of it being received. It is not clear here whether Ofcom mean in instances where the complaint is not resolved on first call, and we would welcome clarification on this point. We believe it is logical to combine the acknowledgment with the notification of ADR which applies to complaints not resolved on first call.
31. H3G notes that it has not been possible for Ofcom to fully evaluate the impact of requiring CPs to log and monitor all complaints. H3G has therefore provided a further estimate of the cost of such a requirement and would remind Ofcom that this is only one additional cost that would arise from the new requirements should Ofcom proceed as proposed in the review.
32. The suggested implementation period for these changes is three months. Given these proposals would require substantial changes to systems and procedures, H3G believe three months would be inadequate. H3G would wish to discuss implementation timescales in detail with Ofcom should it decide to proceed with these proposals.

Record keeping

33. The consultation states that records would have to be maintained for fifteen months, because Ofcom considers "that this is a reasonable period to allow us to undertake investigation and enforcement action". H3G are unclear as to what underlies this assertion and would welcome a further explanation of this. Ofcom variously requires records be held for six months (persistent misuse), 12 months (proposed under draft GC23) and is now proposing 15 months for complaint records. It is becoming an increasing challenge and cost to tailor database requirements around specific regulations and H3G would urge Ofcom to take a more consistent approach to the requirements on data storage.



Questions

1. *Do you agree with the following definition of Complaint:*

“Complaint means an expression of dissatisfaction made to a Communications Provider related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.”

H3G understands why Ofcom wishes to agree a single definition of "complaint" across the entire communications sector. However in order for it to be effective Ofcom will need to give a number of examples of what would and would not be an expression of dissatisfaction. For example is it a complaint if a customer calls and says their bill is too high? Or their handset doesn't have the functionality they were used to and they don't like it, or they didn't have coverage in the area they holidayed in? In each instance the customer could refuse to accept the answer they are given and to demand it be escalated. This could significantly increase the number of recorded "complaints" despite these not being issues for which H3G could reasonably held responsible.

As indicated above H3G would like to see fault removed from the definition of complaint as this may trigger a referral to ADR for a problem relating to a manufacturers fault.

2. *Do you agree that a consumer should have the right to go to ADR:*

(a) eight weeks after a complaint is first received by a CP; OR (b) earlier, if a CP has issued a deadlock letter.

H3G agrees with these proposals.

3. *Do you agree with our preferred Option 4 that a CP should be required to give written notice about ADR: (a) Within five working days after the Communications Provider received the Complaint, unless the complaint has been resolved at the first point of contact;(If a consumer contacts a CP again about a matter which the CP reasonably believed to be resolved at first contact then notice should be given at that time) AND (b) eight weeks after the CP first receives the complaint, earlier if the complaint is resolved or when the CP issues a Deadlock Notice.*

H3G disagree with the requirement to notify customers within 5 days (see above).

H3G agree with notifying the customer at 8 weeks if the complaint is unresolved and in the event of a deadlock letter.

4. *Do you agree that the notice about ADR which CP should give must be: (a) be in writing in a durable form (b) be in plain English, clearly written and concise; (c) include a reference for the complaint; (d) include details of the ADR Scheme which the CP is a member of, including*

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contact details; (e) and summarise when the consumer has the right to go to ADR Scheme and the role of the ADR Scheme.

H3G disagrees with (a) (see above) but agrees with (b) – (e)

5. Do you have any comments on the criteria which we propose we will use in our future review approval of the ADR Schemes?

No.

6. Do you agree that CPs' should be required to comply with a single Ofcom Approved Complaints Code of Practice which sets out high level mandatory standards for complaints handling?

H3G support this, but request further clarification on the operation of the proposed complaints handling procedures as detailed above.

7. Do you agree that CPs should be required to keep a log of all complaints? We could require CPs to log complaints when they are first received and as they are handled. These records must include as a minimum for each Complaint a log setting out:

(a) Details of the Complainant, including their name and address; (b) the date on which the Complaint is first received; (c) a description of the Complaint; (d) and a description of how the CP deals with the Complaint.

Ofcom argues the record keeping is required in order to demonstrate compliance with the new requirements. However the requirement to acknowledge the complaint and send details of the ADR scheme and to refer within 8 weeks, is not dependent on the details of the complaint, name and address being stored. Statistics showing date received date of letters sent and updates sent would enable Ofcom to evaluate whether the regulation was being complied with.

H3G has provided an estimate for the cost associated with implementing this requirement in and strongly questions whether this is proposal is proportionate to its stated aim and value.

8. Do you agree that three months from publication of the Statement for this Review is a reasonable period to implement the changes proposed in this Consultation Document?

Three months is wholly unrealistic. The system changes for the monitoring of complaints and the requirements to acknowledge in writing every complaint would take a minimum of 8-12 months to implement. Some system changes could form part of a proposed project however this, if agreed, would not be implemented until late 2009.

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