



vodafone

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Alan Pridmore
Consumer Affairs Principal
Consumer Group
Ofcom

Ofcom review of relay services

Vodafone welcomes the opportunity to respond to Ofcom's consultation 'Ofcom review of relay services' dated 28 July.

Summary

Vodafone recognises the importance of accessibility and currently goes beyond what is required of it by regulation to ensure it delivers communications services to its hearing, speech, sight and dexterity-impaired customers. It is important to us that all our customers can enjoy the benefits of mobile communications services.

We are concerned however over the lack of demand for intermediated solutions, like next generation text relay and video relay, which could result in significant stranded investment. Taking this concern into account, we would urge Ofcom to ensure that its approach in this matter is compatible with the principle of proportionality. It is accordingly critical that the detail of how new mandated solutions are to be implemented is subject to close and further examination. Specifically, we would invite Ofcom to ensure that it is able, in conjunction with the consultation process and through ongoing dialogue with industry stakeholders, to derive an informed and reliable estimate of the likely costs of implementation of any proposed solution. Absent such information, there is a clear risk that Ofcom may elect to proceed upon an unreliable assessment and adopt solutions that are ultimately disproportionate.

Vodafone and accessibility

Vodafone recognises the importance of accessibility and goes beyond what is required of it by regulation to ensure it delivers communications services to its hearing, speech, sight and dexterity-impaired customers. It is important that all our customers can enjoy the benefits of mobile communications; examples of what we provide include:

Vodafone Limited

Vodafone House, The Connection, Newbury, Berkshire RG14 2FN, England

www.vodafone.com

- Screen-reader – Vodafone is the only mobile network to offer its visually-impaired customers the Nuance TALKS ‘speaking phone’ product free-of-charge installed on compatible mobile devices
- Text-only package – we offer a package without voice-related services for those unable to use such services
- Emporia RL1 – we have launched a new device, exclusive to Vodafone, which is specially designed for dexterity-impaired and senior customers
- Smart-accessibility awards – Vodafone Group and The Vodafone Foundation have offered a €200k prize for the best ideas to help hearing, speech and dexterity-impaired citizens access services
- Emergency SMS (SMS 999) – Vodafone was the first company to support this initiative, launching nearly two years before it became mandatory – the first such national scheme in Europe

Vodafone will continue to develop further initiatives to help our hearing, speech, sight and dexterity-impaired customers in the future.

Demand for relay services

We are concerned that there appears to be little evidence that intermediated services are in strong demand by their supposed beneficiaries. Having text relay on mobile was supposed to be essential for hearing-impaired citizens, so in 2005 Ofcom went ahead and mandated the only text relay on mobile requirement in the EU. A move that significantly ‘gold-plated’ the EU requirements¹. Vodafone now has a handful of customers using text relay – we understand some of the other mobile operators to have next to none – representing significant stranded investment.

The evidence in the consultation is that intermediated solutions are not popular with users. This problem is immanent in relay solutions; they are by their very nature intermediated. Ofcom’s own research highlights that:

“People who have hearing and/or speech impairments make use of a wide variety of communications services such as mobile text messaging and email where they are so able to do, particularly when communicating with friends and family.”²

“The market research also sets out that users have a preference for communicating without the presence of a third party relay assistant”.³

RNID research indicates that there are about 10m people who are deaf or have hearing impairments. Out of these 10m people, text relay is used for 33,000 calls per week⁴ (with the vast majority of these on fixed-line). It is therefore clear that the vast majority of hearing and speech-impaired people have found other, more suitable, non-intermediated solutions to meet their communications needs.

¹ Berec’s 2010 report ‘Electronic communications services: Ensuring equivalence in access and choice for disabled end-users’ shows that only seven NRAs in the EU mandated text relay; only Ofcom mandated it for mobile. There have not been any infraction proceedings against those Member States that did not mandate text relay.

² Ofcom consultation, 4.43

³ Op. cit. 4.44

⁴ Op. cit. 4.2

Vodafone is accessible by web-based forum, email and face-to-face as well as through voice-based telecommunications. Vodafone also offers the mainstream, near-ubiquitous solution of SMS on an SMS-only basis to its customers who are speech or hearing-impaired.

Unintended consequences of regulation

Mandating relay services may discourage innovation and investment in better alternative communication technologies as incentives disappear with solutions mandated by regulation taking their place. Furthermore mandating relay solutions help enable organisations to expect that a solution for their duty to provide equal access will be provided by the communications industry. Mandatory relay services may also act against the success and development of new technologies which could provide a better or mainstream solution – such as voice recognition technology.

Ofcom itself appears to admit this concern, noting that:

*“With the increased availability of mainstream text-based messaging services, such as email, mobile text messaging and instant messenger, it is likely that individuals will use relay services **only** where none of these alternatives are viable, for example when contacting banks and healthcare providers” (emphasis added).⁵*

Ofcom's regulation serves to disincentive banks and healthcare providers, for example, from being accessible in ways that speech and hearing-impaired citizens may well prefer – via a non-intermediated solution.

To use Ofcom's own vox pops, the experience of 'Mary' is perhaps telling:

“If she had to cope on her own, her first choice would be face-to-face communication so that she has total confidentiality and is able to lip-read. Her other choices would then be SMS text message or email”.

She goes on to say in 'What would make a difference' that her preference is:

*“Not to have to rely on a third party to “listen” and communicate for her”.*⁶

The extent of relay services' lack of popularity is further borne out by table 3.1, 'Means of communicating with different types of people and organisations'⁷, with relay scoring well below other non-intermediated solutions.

Equivalence

The concept of equivalence lies behind Ofcom's more concrete proposals for NGTR and VR but does not connote a specific definition or standard. The fact that Ofcom itself talks in terms of 'increased equivalence' (see e.g. 1.14) and 'a high level of equivalence' (see 1.18) illustrates that the term is somewhat fluid and hard to pin down.

⁵ Op. cit. 4.50

⁶ Ofcom Relay Services, Opinion Leader research, February 2011, p.31

⁷ Op. cit. p.19

It is important to appreciate that equivalence does not mean identical. This clear on the face of the relevant provision of the Universal Service Directive, which provides that: “access to, and affordability of, the services identified...is **equivalent to the level enjoyed by other end-users**”⁸ [emphasis added]. As a simple matter of fact, Vodafone notes that relay services that require human intermediation are inherently incapable of providing the same privacy and confidentiality as conventional voice calls. This is a point to which prospective users of relay services attach some importance.

It should therefore be clear that the concept of equivalence does not in and of itself confer upon NRAs a wide-ranging and unfettered discretion to embark upon a particular course of regulatory intervention. As we have noted earlier, and cover in more detail below, the principle of proportionality is an important constraint that should be taken into account before any decision is adopted.

Proportionality

Proportionality should be at the core of any policy decision adopted by Ofcom. This is no more than is required by both Community law and also the Communications Act 2003⁹, which stipulates that Ofcom’s actions must be consistent with this overriding principle. In simple terms, proportionality means that any public body must be capable of justifying its actions, specifically by demonstrating that where a range of options are available to realise a stated policy objective, the least onerous one is adopted. In other words, the course of action must not go beyond what is necessary to achieve that objective.

In the specific case of the imposition of universal service type obligations, the importance of proportionality is further reinforced by the provisions of the Universal Service Directive. When seeking to implement universal service type obligations (including those under Article 7) Member States are required to respect the principle of proportionality.¹⁰

A thorough cost-benefit analysis can be a critical tool in seeking to comply with the principle of proportionality. We therefore welcome Ofcom’s recognition in this case that in order to assess proportionality it is necessary to investigate the costs and benefits associated with proposals that may be under contemplation. Absent such an investigation, there is a risk that any cost benefit analysis will not provide a reliable basis upon which Ofcom and industry can proceed. Ofcom is quite right not to accept strong assertions about costs and benefits uncritically.

For VR it is clear, for example, from the critique at Annex 9 that the EE report commissioned by Sorenson Communications arrives at an inflated view of net benefits using a variety of novel and questionable methods (such as reclassifying costs as benefits). Having reviewed this report carefully, Ofcom is entitled to regard its findings with some scepticism.

Ofcom must, however, also exercise similar caution in regard to its own estimates of cost and benefit at this stage. Ofcom’s analysis usefully exposes some of the cost drivers at a high level. In particular, it reveals the extent to which services that rely on human intermediation by highly skilled BSL operators with scarce expertise is likely to drive costs well beyond the level of expected benefits. As Ofcom notes at 1.17:

⁸ Article 7(1)

⁹ Communications Act, s.3(3)(a)

¹⁰ Universal Service Directive, Article 3(2)

“But the cost could be considerably higher, for example in our high demand scenario the cost is £113.4 million a year or a cost per user of £3,780 a year. We have not been able to identify benefits on a similar scale.”

However, while it is useful to recognise some of the likely key cost drivers, Ofcom must not lose sight of the fact that considerable uncertainty currently attaches to its cost estimates. This applies not simply to variable costs, where Ofcom has at least attempted some sensitivity analysis by varying demand, but also to fixed platform costs and the costs for individual CPs of integrating with any central platform, which could be substantial.

Ofcom should be mindful of guidance from the Competition Appeal Tribunal (CAT) on the conduct of cost benefit analyses:

“ . . . it will not be necessary in every case in which OFCOM intends to carry out a CBA [cost-benefit analysis] to provide specific cost estimates only following the design of an exact technical specification. What is required is that stakeholders consulted on proposals should be able to provide realistic estimates of the likely costs of adopting a proposed solution founded on a comprehensive range of specification. It will be a matter for the regulator to decide, in each individual case, whether it is best placed to design the initial specification that will be consulted upon and costed by industry or whether it will require industry to cooperate on the formulation of the technical parameters.”¹¹ (para 65)

The CAT went on to conclude that industry participants were:

“unable to provide informed views to OFCOM on the likely costs of the proposed solution due to the uncertainties inherent in OFCOM’s proposals, for example, in relation to the absence of a technical specification.” (para 97)

Consequently:

“in the absence of a provisional technical specification on which consultees could provide useful data, OFCOM deprived themselves of the opportunity properly to inform their analysis of the potential costs of their proposals.” (para 95)

Similar considerations clearly apply here. Ofcom cannot, therefore, simply disregard the detail of how any new mandated solution is to be implemented. It must develop and outline proposed solutions in sufficient detail to avoid the risk of industry stakeholders providing estimates on the basis of divergent assumptions, thus rendering any cost estimates and the resulting cost-benefit-analysis flawed and unreliable.

This is something Ofcom will doubtless wish to return to in any subsequent consultation. In the meantime, Ofcom must take care not to prejudge the outcome of future impact assessments by making ‘in principle’ decisions prematurely.

Vodafone accepts that NGTR represents an ‘incremental’ step in terms of relay provision. However, Ofcom’s suggestion that the incremental capital costs for the communications industry as a whole will be as low as £348,000 in year zero¹² does sound exceedingly low, given the complexity of individual companies’ operation, the challenge of introducing new technologies and of interconnecting with each other to offer the customer a seamless

¹¹ www.catribunal.org.uk/238-657/1094-3-3-08-Vodafone-Limited.html

¹² Ofcom consultation, figures 5,6 and 7 (pp.22-4)

user experience. We therefore consider it appropriate that more a detailed investigation of the potential costs to industry be undertaken.

Leaving aside the building of the new platform itself, each CP will have to develop, test and implement systems and technologies capable of interoperating with the new platform along with changes to its billing platform to ensure any charging is not more than it would be had a relay service not been used. Each CP will also have to train its staff as well examine its product and service portfolio to ensure it complies. And whilst the benefits of NGTR, including 'reduced loneliness and anxiety' and 'benefits to other business and the wider economy', are laudable they are hard to quantify.

It is essential therefore that Ofcom takes some responsibility for the NGTR market that emerges, as it will be a market created of regulation. Whilst it is possible that there will be a variety of providers of an NGTR platform, it is more likely that there will be one unavoidable trading partner, which may consider itself unconstrained in its wholesale charge.

Vodafone Ltd