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18 March 2010

Dear Jeff,

A Review of Consumer Complaints Procedures

Please find enclosed our response to the consultation on the review of Customer Complaints Procedures.

We note that Ofcom has rethought a number of the original proposals detailed in the 2007 & 2008 consultations on Consumer Complaint handling and ADR; and we welcome Ofcom's approach to consulting on this issue and its desire to arrive at an outcome that benefits consumers and is at the same time practical from a communications provider perspective.

We would be happy to elaborate on any of the points raised in our response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Julie Minns'.

Julie Minns
Head of Regulatory & Public Policy

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Hutchison 3G UK Limited ("3UK")

Response to

A Review of Consumer Complaints Procedures

March 2010

Background

1. 3 was the UK's first 3G network offering national coverage for calls and texts, and has 93% population coverage for 3G services. As we consolidate our radio access network with T-Mobile we expect to reach 98% UK population coverage for 3G by the end of 2010. 3UK has over 4 million mobile and mobile broadband customers in the UK.
2. 3 was awarded a licence by the UK government in 2000 as part of a process which was explicitly aimed at stimulating competition in the mobile sector. 3UK has been at the forefront in developing innovative mobile products and services. We have brought value to the market, simplified pricing and led the market in delivering mobile broadband; in short 3 has improved choice and value for the consumer.
3. 3 is driving forward the expansion of mobile broadband infrastructure and growth in the range of mobile internet options available to consumers, and has been at the forefront of many key sector developments. It is this experience that informs our understanding both of the complexity of the complaints that can arise and the challenge providers face in resolving some complex complaints as quickly as the customer might wish.

Overview

4. 3 is broadly supportive of Ofcom's proposals to improve complaint handling and access to Alternative Dispute Resolution ('ADR'). However, 3 notes that this two year project has been undertaken against a backdrop of high levels of consumer satisfaction in the mobile sector¹ and is focused on the "small minority"² of consumer who have problems. 3

¹ Ofcom's Communications market report 2009 found 94% consumer satisfaction in the mobile market

² Section 4.3: A Review of Complaints Procedures (Ofcom December 2009)



therefore questions whether regulatory intervention to address the problems experienced by a “small minority” can be justified as proportionate.

5. 3 further notes that the research undertaken by Synovate predates the previous regulatory change to the ADR scheme, namely the reduction from twelve weeks to eight weeks before a complaint can be referred to ADR. 3 is therefore concerned that the Synovate research into consumer understanding of ADR may not accurately reflect what the consumer experience of ADR is under the current 8 week time limit.
6. Notwithstanding the above comments, 3 believes that a number of the proposals would bring consumer benefit. However 3 foresees significant challenges for Customer Service teams in knowing when to date a complaint from, as the consumer themselves may not believe they are making a complaint on their first, second or even third call. Furthermore it is unclear whether the communications provider would have to retrospectively classify an enquiry as a complaint when the customer expresses dissatisfaction on a subsequent call.
7. The consultation also seeks views on the use of complaint data in comparative information. 3 has some concerns about the use of complaint data as it does not enable context to be given or give an accurate cross comparison. For example, if Ofcom data were to be used, it would be possible for some providers to mask the extent of customer unhappiness by ‘buying off’ the complaint before it escalated externally, a similar issue applies in relation to ADR complaints. That might solve the complaint but not necessarily the problem, and would mean a new customer might experience the same problem having joined believing the provider was a good company because it had low complaint levels. Lastly if the providers own data were used without an agreed cross sector, independently validated recording system you would not be comparing like with like, and the consumer would not be able to make an accurate comparison. In terms of context it might be that one provider had experienced network or capacity issues over several months resulting in service outages. These may result in complaints but the headline figure wouldn’t explain what had happened or that it wasn’t a problem any more. 3 would welcome the opportunity to discuss the use of complaint data for comparative purposes further in due course.

Defining a complaint

8. 3 welcomes Ofcom’s proposal to limit the definition of complaint to ‘Public Electronic Communications Services’. In our response to the earlier consultation we expressed strong reservations about the practicality of making communications providers log complaints for



equipment failure, particularly where the timescale for resolution might be outside of the providers control.

9. 3 agrees with the proposed definition, however we do foresee some issues with interpreting an 'expression of dissatisfaction' For example a customer who has been given a resolution time by which their service might be restored may reluctantly accept this but express dissatisfaction with the length of time they have been told it would take. Is the advisor to log this as a complaint or to close the case believing it is resolved as clear information and advice has been passed to the customer?
10. 3 believes that any obligations in relation to the logging and recording of a complaint should relate only to complaints registered via the complaint routes detailed in the providers complaints procedure/code of practice. It would not be reasonable for example for the consumer to be able to claim that having expressed dissatisfaction in store or on the providers blog, that they had registered a complaint. We would therefore welcome confirmation that a complaint is both one that meets the definition and is made using the complaint routes set out in the providers Code of Practice.

Referral to ADR

11. 3 supports the current ADR regime, believing it to be an appropriate and effective means of resolving disputes for both parties. However we are concerned that timing a complaint to ensure the consumer is advised of their right to go to ADR is not a precise science. For example, a customer may call three times to enquire about the progress of their initial enquiry or reported fault, but may not express 'dissatisfaction' until their fourth call. However it is unclear whether the complaint would date from the original enquiry or from the fourth call. Furthermore what happens if the customers calls sporadically over a period of weeks, only to express dissatisfaction eight weeks after the initial call? It would not seem right that the communications provider would immediately have to advise the customer of their right to go to ADR.
12. 3 supports the consumer's right to go to ADR sooner than 8 weeks should it prove impossible for both parties to resolve the issue and the communications provider issues a deadlock letter.
13. 3 is supportive of the proposal that providers should advise consumers at week 8 of their right to go to ADR if their complaint was not resolved. We believe it is more appropriate for the consumer to be advised of their right to go to ADR after they and their provider have had sufficient time to resolve the issue rather than before. There are costs



associated to the implementation of this requirement, but 3 do not consider these to be prohibitive. However 3 would require a 12 month lead in time to secure project and budget approval for the system changes that would be required to support notification at 8 weeks.

Adherence to a single Ofcom Code of Practice

14. 3 has no objection in principle to a single Code of Practice, however we do have reservations about Ofcom's proposed approach to measuring compliance. The consultation document suggests that compliance with the Ofcom code will be evaluated by reference to complaint levels. However 3 believes that this will not necessarily reflect the issues being faced by consumers, rather the number of consumers who find their way to Ofcom (please see our comments in paragraph 7 of this response). 3 would therefore welcome some additional suggestions as to how Ofcom might measure compliance.
15. The proposed Ofcom Code of Practice will require providers to publish details of the timeframe in which they expect to resolve complaints. However 3 is concerned that some providers will set long timeframes in order to limit their exposure of being found non-compliant against the Ofcom code. Where as this provider would be technically compliant, the consumer experience would remain poor. 3 suggests that when issuing guidance for the single Code of Practice, Ofcom seek to clarify what would be judged to be 'fair and timely' as set out in 3a) of the proposed Ofcom Code of Practice for Complaint handling.
16. Ofcom includes in its suggested criteria for accessibility a requirement for the code of practice to be one click from the homepage or clearly marked "how to complain" or similar. 3 believes stipulating that the Code be one click away is too prescriptive and does not enable providers freedom to locate their codes of practice where they believe their customers would most logically look for it. 3 instead recommends that providers be permitted to locate their codes of practice either one click away or within the 'contact us' section of the provider's website.
17. Ofcom proposes to require providers to two low cost methods by which consumers can make a complaint. The draft Code of practice suggests that a freephone number is an 0800 number, 3 would ask that the definition of a freephone number be widened to as to include a number that is free for its customers to call. For example 3 customers can call 3 for free from their 3 handset.
18. 3 further notes that the draft Code of Practice would require providers to include information about the Code of Practice in the welcome information each customer



receives. However no explanation is given as to why this would be an effective method of making consumers aware of the Code of practice. 3 has already undertaken a detailed project in response to GC23 to revamp its welcome letters. The project required considerable time and resource to deliver and 3 does not believe that a further revision to the welcome letters could be justified in this financial year. Instead 3 would rather ensure – through the requirement to make the Code of Practice accessible on the 'contact us' page – consumers are able to locate the Code when they need it, rather than as additional piece of text in a communication that they do not necessarily retain.

Awareness of ADR

19. 3 believes ADR awareness is relevant at the point the consumer needs assistance with resolving a complaint. Attempts to generically raise awareness would, in our view, have no discernable benefit other than to the consumer who needs to escalate their complaint, and the proposals will ensure that customer is advised of ADR at that point. Therefore whilst 3 supports notifying consumers of their right to go to ADR when their complaint has been unresolved for 8 weeks, 3 is not convinced that placing ADR details on the back of a bill will be effective - particularly when increasing numbers of customers access their bills online and will therefore be able to locate ADR details via the Code of Practice on their providers website at the same time. Ofcom will need to consider carefully whether the costs associated with adding this information are proportionate to, and will be effective in achieving, a meaningful and useful awareness of ADR.
20. 3 understands the need for Contact Centre staff to be able to advise customers about the Code of Practice and about their right to go to ADR, however we do not understand the relevance or consumer benefit that will come from briefing advisors about Ofcom's regulatory responsibility for the General Conditions of Entitlement. Advisers have a wealth of information that they need to access, all of which is critical to their ability to best serve the customer. We fail to see how an understanding of Ofcom's enforcement role best serves the customer, particularly when this information is available from Ofcom's own contact centre.
21. As indicated above 3 is sceptical about the benefit of including ADR details on customer's bills. However if Ofcom do proceed with this requirement 3 would ask that Ofcom specify the information to be included, rather than the wording. Most providers, including 3 have a 'tone of voice' for their customer communications, by taking a prescriptive route Ofcom will deny providers the ability to communicate with their customers in the tone and style that reflects their brand. Such a prescriptive approach is not necessary to achieve an increase in awareness of ADR.



22. 3 strongly disagrees with the assertion made in the consultation document that an increased cost to providers in the form of case fees that may come from increased awareness of ADR should not undermine the case for increasing awareness. Ofcom has a clear duty to determine whether the proposed benefit accruing from increased awareness is sufficient to justify the increased costs. 3 has looked at the impact increased awareness would have on Otelo case fees if awareness increased from 8% to 40%. We estimate the annual increase in case fees to be around £1m, and could require – based on averaged ADR referrals - an increase in headcount of 21. 3 does not believe the current impact assessment has accurately assessed whether this proposal would be proportionate.

Record keeping

23. Whilst 3 appreciates the underlying purpose in the proposals for record keeping they are, in some respects, unworkable. Written complaints are stored on the customers account already, so a requirement to hold them for six months would not have any implications. However storing all telephone complaints for three months is problematic. Currently a percentage of calls to 3's contact centre are recorded for training purposes. However the advisor does not know if their call is recorded and the system does not know if the call is a complaint or another form of enquiry. In order to meet the requirement the advisor, having logged a complaint would have to manually request that the call be stored for the required three months if it had been recorded, even then the system is not configured to be capable of such a high volume of manual instruction. In addition the advisor would be diverted from frontline duties while they sorted out the call storage, this would have a considerable impact on our staffing levels. It is not therefore possible to apply the regulation as suggested to 3's systems. The cost of recording and storing 100% of the calls received by 3's Contact Centre (in order to capture those calls which are later identified as being a complaint) is prohibitively expensive.

Timescales

24. 3 agrees with the proposed timescales for implementation.

Conclusion

25. 3 believes that there is considerable benefit to a number of the proposals. In particular we would support notifying consumers about ADR when their complaint reaches eight weeks, and believe the consumer benefit justifies the investment that would be required to comply with this requirement. However 3 believes that Ofcom needs to give greater consideration to the financial impact increased ADR awareness would have on case fees and additional headcount. 3 believes the requirements on where the providers own code



should sit on the website and the wording for the bills are too prescriptive and, in any event, the case for enclosing it with bills does require further consideration given the move to electronic bills. Lastly 3 would encourage Ofcom to consider how providers would deal with the practical application of the proposals, particularly in regard to when the clock starts on a complaint in instances where the customer made several enquiries before expressing dissatisfaction.