



SIMWOOD
AUTHENTIC WHOLESALE TELECOMMUNICATIONS

2 Venture Road . Southampton . SO16 7NP
www.simwood.com
0330 122 3000
team@simwood.com

Ofcom Strategic Review of Digital Communications

We welcome the opportunity to express our opinion, and trust it will be received as constructive, despite many of the views being very passionately held about issues that are deeply frustrating.

What is the point of Ofcom in digital communications?

This may sound facetious but we consider any strategic review should start at this high level. We consider Ofcom works for the tax-payer, as it is paid for by the tax-payer, and it is answerable to the tax-payer. 'The tax-payer' is both an individual and a business who also consumes the services Ofcom regulate. A review should therefore consider the actions Ofcom has taken and the extent to which they have benefitted consumers and businesses.

It should also recognise who Ofcom does not work for - the incumbent and major mobile networks. A review should therefore consider Ofcom's past actions in the light of any benefit to them, specifically market distortions in their favour. It should also consider the extent to which Ofcom has enforced its own rules on market participants and fulfilled the role of 'regulator'.

Clearly, a regulator which delivered little or no benefit to the tax-payer who pays for it, but did distort the market to the benefit of major players, would not be fit for purpose. If that were the case, then a more detailed review into further actions Ofcom could take would be pointless if those actions did not relate to Ofcom's exit from the sector.

For the record, we support self-regulation within a statutory framework. We support a neutral regulator engaged with industry and fostering an environment of fair, transparent competition. We support a regulator that takes positive action that benefits the tax-payer, either directly or through enabling competition. We do not support a regulator that makes changes which increase complexity or fail to deliver benefit to the tax-payer, whilst distorting the market in favour of the incumbent.

Sadly, as the below exemplify, we feel we have the latter.



2 Venture Road . Southampton . S016 7NP
www.simwood.com
0330 122 3000
team@simwood.com

Number portability

The major pain point in our industry for consumers and participants relates to portability. We have commented before¹ how the current process is third world and a national embarrassment. Despite that, Ofcom has taken no positive action with regard to it. The current process and Ofcom's unwillingness (in our experience of trying) to enforce GC18 fosters much game-playing. Whilst we would favour a complete technical overhaul that enables any customer on any network to port service to any other with no pain, as other countries and other industries have managed, that is a major change. For now, we would favour Ofcom enforcing GC18 and having a fast-track process for end-users and industry to report game-players. If GC18 had teeth behind it then the existing process, broken as it is, could drive industry to simplify arriving at a full mesh of porting agreements.

It should also consider the role of BT's IPEXchange which is distorting the market. Networks with porting agreements with BT, which is most if not all, are forced to deal with Openreach. Openreach liaise with IPEXchange but have no power over them and it is often the case that numbers hosted on IPEXchange are, for one reason or another, not portable. The customer is therefore trapped. Conversely, if an IPEXchange reseller (keep in mind it is a managed service, not a regulated interconnect) wishes to port a number in, they can use the full extent of BT Group's porting agreements and the IPEXchange porting team have the uni-directional capability of doing so without involving Openreach.

Ofcom's inaction here has created a position of great pain and disadvantage to end-users, in an environment that favours the incumbent. From a competitive perspective, new entrants are better off being BT resellers than trying to compete.

One action Ofcom has taken with consequent market distortion is the Narrowband Review². We made our views³ on the reduced termination rate stifling competition at the time but we also made comment about the impact on porting. By reducing the termination rate whilst taking no action in respect of the APCC we warned that numbers ported in would become loss-making. They did, and remain so, affording a gain that naturally favours BT Retail. Thus

¹ Simwood Blogs | OFCOM's Consultation on Number Portability Charging
<http://blog.simwood.com/2014/05/ofcoms-consultation-on-number-portability-charging/>

² Simwood Blogs | OFCOM review of the fixed narrowband services markets
<http://blog.simwood.com/2013/03/ofcom-review-of-the-fixed-narrowband-services-markets/>

³ Simwood Blogs | OFCOM presses ahead regardless
<http://blog.simwood.com/2013/03/ofcom-review-of-the-fixed-narrowband-services-markets/>



2 Venture Road . Southampton . S016 7NP
www.simwood.com
0330 122 3000
team@simwood.com

Ofcom's intervention in the market has arguably distorted it in favour of the incumbent with no benefit to the tax-payer. As an aside, we would argue the Narrowband Review in its entirety delivered no benefit to the tax-payer, and only to the incumbent.

Number allocation and activation

Mobile aside, as we'll come to that, Ofcom's numbering team have historically been efficient. CP chooses number range, they say yes and press a button, send a PDF certificate and update the list of those available. It worked. Ofcom have introduced what they call a portal for reasons unclear.

In our view this is an aberration of software design that wouldn't have been considered user friendly in 1995. The process of applying for number ranges has become more time consuming, and thus more expensive from our perspective but that is ok if there is benefit to those who pay for Ofcom's involvement - the tax-payers. A review should question this. It has doubtless cost a lot of money to develop but presumably there is a payback in actual cost-savings? We support that as in-keeping with what Ofcom is there for, if it is the case. We suspect the numbering team is the same size, the process is no more efficient at the Ofcom end (it certainly takes longer), it has got more expensive for CPs whilst it has cost money to develop. Thus, where is the benefit to the tax-payer, or anyone in fact?

We appreciate that numbers are a scarce resource and need to be conserved. We therefore welcome Ofcom's introduction of 100 number blocks and understand the Number Charging Pilot Scheme. A review might consider why these relate to completely different area codes though, i.e. in an area subject to charging number ranges are still in 1000 number blocks, and who benefits from that being the case? Surely conservation is better achieved by both 100 number blocks and charging? Going forward, for porting reasons as well, we would favour imposition of smaller block allocation and routing to recognise the greater number of smaller CPs. We would not welcome an extension of number charging to further larger number blocks as it would then take on the appearance of an industry tax, with no benefit to end-users.

Once numbers are allocated, they need to be put on-contract with interconnected networks. Fundamentally this means BT Wholesale as without BT building a range it will not be usable. This puts them in the privileged position as gate-keeper and enforcer and side-lines Ofcom. Ofcom argued the opposite with the Narrowband review claiming that any Range Holder had "Significant Market Power" to impose commercial terms and therefore had to be subject to



2 Venture Road . Southampton . S016 7NP
www.simwood.com
0330 122 3000
team@simwood.com

price-control. The reality, then as today, is that a number range cannot be built on BT's network on commercial terms BT don't approve of. In the case of Mobile, their gate-keeping role extends beyond commercial terms into a technical approval. A review should look at how this differs to Ofcom's view of the world, and whether it is fair and reasonable, and benefitting the tax-payer, for such a position to be occupied by the incumbent. Is it also fair and reasonable that the gate-keeper for new mobile services owns a mobile network?

Ofcom have made some efforts to build its own database of charge-bands with NGCS but our analysis shows that the rates built in the market and the rates recorded by Ofcom⁴ are dramatically different⁵, and the duplication was of no benefit to the tax-payer. In fact for CP's and end-users relying on Ofcom's list the duplication is potentially devastating given the general and quite dramatic cost increases evidently to result from NGCS. We support Ofcom holding a master list of interconnect rates and performing the gate-keeping role, and by doing so it would have visibility into how the market functions, but it needs to be able to do so.

Post-contract with BT and other directly connected networks, number ranges need to be data-filled on other networks. This takes place via the Ofcom (or rather the Oftel) Yahoo Group. A review might consider whether it is befitting for the world's sixth largest economy to manage critical national infrastructure via a Yahoo group but we would hope that is obvious. What we would like the review to consider is the process beyond posting that message. Many networks receive the Yahoo message, and very ably build the number range. Others do not and some pick and chose which ranges they enable. It is therefore something of a lottery, and what follows is an exhaustive process of testing and pleading. A review could consider how Ofcom could negate this needless and embarrassing process, and ensure fairness.

If numbers are data-filled, a retail rate is set based on the known cost. With the 03 UK-Wide range Ofcom mandated they be included in any bundle that covered geographic numbers and this was a positive action we really applaud. We would favour the review considering how that approach can be extended. For example, if my mobile range has the same MTR as a major mobile network's, is it fair and reasonable for other mobile networks to not include it in bundle and play a message to callers along the lines of 'Calls to this number may not be included in your price plan allowances, please see our website for details.'. A review might consider how that is in the interests of competition and the tax-payer, and explore similar

⁴ Simwood Blogs | NGCS changes: "But Ofcom say..."
<http://blog.simwood.com/2015/06/ngcs-changes-but-ofcom-say/>

⁵ Simwood Blogs | Will consumers be better off under NGCS?
<http://blog.simwood.com/2015/05/an-analysis-of-ngcs-price-changes-part-1/>



2 Venture Road . Southampton . S016 7NP
www.simwood.com
0330 122 3000
team@simwood.com

solutions to 03 UK Wide at the retail end. Measures such as the Narrowband Review and MTR caps have arguably shifted margin from wholesale to retail rather than benefit the consumer as they should.

Openreach separation

Others will comment on Openreach's operational inadequacies and we do not disagree but we would like a review to shine a light on the competitive impact and consumer harm caused by Openreach remaining part of BT Group. Openreach's poor performance reflects badly on the whole industry with CPs competitive to BT Retail being perceived to have less influence over it than BT itself. Meanwhile Openreach's wins - such as spending £1.7bn of tax-payer funds on fibre roll-out - are claimed in advertising and shareholder reports as BT's success. This is a competitive distortion and misleading to consumers.

Whilst Openreach remains within the same group, staff have mobility between group companies and attribution of their cost may not be clear. We assume this to be the case with other operational areas and note that any such gaming serves as an input to charge controls. At a higher level and perhaps more significantly, the cost-of-capital calculation and different economic models applied to them by Ofcom greatly benefit BT Group. The Narrowband Review was based on LRIC model yet BT benefits from DSAC which can be argued to be its opposite - an economic model that assumes an inefficient entity providing only one product, and thus with massive common costs. Others have said this disparity paid for BT's £2bn TV adventure. Is that in the interests of competition and of benefit to the consumer?

Were Openreach to be separated, any review considering it should also consider its scope so as to avoid it becoming the BT equivalent of the bad-bank. Were it separate today there would be massive commercial benefit to what remained BT Group by virtue of product split and forced consumption. For example, WLR is an Openreach product, but calls default to BT Wholesale at (very) penal rates. A network wishing to on-board WLR calls to itself must use CPS for which it must pay BT Wholesale, not Openreach. New lines installed or taken-over may still 'leak' calls during CPS migration, yes, to BT Wholesale not Openreach. It is thus impossible to compete with BT without being a BT customer, even if Openreach were to be separate. Any separation of Openreach must ensure it results in other networks being able to compete on fair and equal terms with BT rather than be beholden to it.



2 Venture Road . Southampton . S016 7NP
www.simwood.com
0330 122 3000
team@simwood.com

The separation of Standard Interconnects must also be considered and we would argue they have a place within Openreach, not BT Wholesale. That would clarify the position of, and prevent cross-selling of, BT IPExchange as a BT Wholesale managed service, rather than a regulated interconnect.

Mobile

We would like a review to consider Ofcom's position on the mobile market. Our experience in building Simwood Mobile⁶, an attempt to open the mobile market to smaller innovative CPs to the benefit of consumers, is that the primary obstacle has been Ofcom. There are many other obstacles, some of which have been alluded to here but the mere process of Ofcom allocating the necessary resources to enable entry to the mobile market, is an affront to competition. We recognise the need to protect resources but this is distinct to protecting markets. We recognise the need to prevent fraud and protect consumers from charlatans but policy here is overly 'chicken and egg'.

An operator like us that has been in business since 1996, an established PECN, with the allocation of necessary resources from the ITU and a working mobile service should not have to spend two years arguing with Ofcom over entitlement to the fundamental resources required to be there. Many of the reasons put to us are directly contradicted by allocations to BT or other MNOs, suggesting they are not applied fairly. Our particular case is now the subject of legal process and complaint to Ministers which is a waste of everyone's time and money. A review should consider whether Ofcom consuming tax-Pounds defending its position as the preventer of competition benefits tax-payers. They are denied competition, whilst paying for preventing it!

Summary

In closing, we'd echo our opening comments. We have highlighted the worst issues facing the market in our experience and they all have either been ignored on Ofcom's watch, or result from or are exaggerated by Ofcom's intervention. Meanwhile, much of the intervention there has been is mis-guided and is of little benefit to the tax-payer that paid for it. On that basis, we consider the starting point for any review to be to question what is it for and who does it

⁶ <http://blog.simwood.com/2015/05/simwood-mobile-developer-packs-shipping/>
Simwood Blogs | Simwood Mobile Developer Packs shipping



2 Venture Road . Southampton . S016 7NP
www.simwood.com
0330 122 3000
team@simwood.com

work for. The answers to those two questions should yield massive tidying up of past intervention and impact future policy.

We remain very happy to provide further information and to propose solutions in Phase 2. We want this review to be a success and yield positive change that benefits the tax-payers who are funding it.

On the assumption this submission does not make it into the official summary, it has been posted on our website and shared with those questioning Ofcom's behaviour on our behalf regarding Mobile market protection.