

Virgin Media's response to Ofcom's consultation on Geographic numbers: Safeguarding the future of geographic numbers.

Virgin Media welcomes the opportunity to respond to Ofcom's third and further consultation on Geographic Telephone Numbers (the "**Consultation**"). Virgin Media has set out its view extensively in its response to the first two consultations on geographic numbers and therefore only has two brief comments to make in relation to this review, both concerning Ofcom's proposal to charge for numbers.

The pilot scheme

As Virgin Media stated in response to Ofcom's first and second consultation, whilst it understands the need for supply side measures and administrative measures, Ofcom's proposals to charge for geographic numbers is premature and is a disproportionate approach to resolving the shortage of geographic numbers. This is particularly the case given that Ofcom is not able to predict the numbers it expects to gain from charging. This means that Ofcom is unable to undertake an informed cost/benefit analysis. As the EC Impact Assessment Guidelines of January 2009 states¹: "[g]ood quality data – facts as well as figures – are an essential part of any IA. You need to define the problem and the baseline scenario, and to identify the impacts of alternative options for dealing with the problem. Particular attention needs to be paid to quality and credibility of data". Without such data or robust analysis, Ofcom should be extremely cautious when proceeding with such an interventionist measure.

To reiterate, the charging proposals are concerning as Virgin Media estimates the pilot scheme alone will cost Virgin Media \pounds and this does not include any necessary technical changes to the systems and the time and resource needed to implement new administration processes.

Therefore, Virgin Media considers that if a pilot scheme is to be introduced it should be reviewed thoroughly within 2 years. To be a genuine pilot scheme (as opposed to a limited roll out of number charging), if the scheme does not materially reduce demand for numbers (the premise of which Ofcom has stated is the rationale for charging) it should be withdrawn, otherwise it is a wholly unnecessary and irrational tax on consumers. However, Ofcom refuses to draft a sunset clause in GC 17 and submits that it will continue levy charges unless "material unintended consequences arise"². This is entirely the wrong basis to continue to charge for numbers. Ofcom should have to justify, with reference to its rationale for charging, as set out in paragraph 4.22, why the charging regime itself has resulted in material benefits and reduced demand for numbers and not assume that success is framed by an absence of harm and unintended consequences.

Utilisation rate

Virgin Media notes that Ofcom is proposing to calculate the weighted industry utilisation rate using data from a sample of CPs. This includes BT, Virgin Media and C&W. Ofcom has justified basing the utilisation rate on these three CPs as

¹ European Commission, *Impact Assessment Guidelines*, 15 January 2009, page 18.

² See para 4.190 and also 4.187

collectively they represent around 70% of number allocations in the 30 pilot scheme area codes. As Ofcom notes, the disadvantage of this approach is that the larger CPs may not be representative of the utilization rate across the whole industry and in fact, larger CPs are likely to have a higher utilization rate (and therefore less of a discount is likely to apply). Moreover, the utilization rate is unlikely to be reflective, in any meaningful sense, of the industry as a whole, as Ofcom has not factored that BT accounts for the vast majority of number allocations in the pilot areas, with all the remaining CPs having less than 10% share (and this includes Virgin Media and C&W).

Likewise, the average industry utilisation should be representative of the industry it pertains to. If Ofcom allocates numbers to 176 companies in the pilot areas, it should not simply ignore the utilisation rate of all but three companies. KCOM, Gamma & Sky are not small companies, and it does seem equitable that C&W and Virgin Media are included in the calculation whilst these other players are not. Specifically, Virgin Media's utilisation rate is not reflective of the utilisation rate in the pilot areas as neither Virgin Media Limited (legacy ntl), Virgin Media Wholesale Limited (legacy Telewest) nor Eurobell (Holdings) Limited, hold allocations in all 30 prospective pilot areas, whereas the Gamma, Sky, Affiniti and Magrathea do. Virgin Media therefore cannot provide insight into utilisation in areas where it does not operate.

Virgin Media therefore recommends that Ofcom reconsiders how it is going to formulate a robust and objectively justifiable methodology for deciding which companies should make up the utilisation rate for the pilot scheme. The group of CPs should comprise a far larger group of CPs than just three and needs to accurately reflect the different sizes/utilisation rates of CPs customer bases and the range of number allocations in the 30 pilot areas.

Virgin Media May 2012