

Consultation Question 3.1: Do you agree with OFCOM's view of the relevant market and assessment of significant market power? If not, explain why.

We do have areas of disagreement between our experience and what is stated within the consultation. Firstly from the demand-side substitution OFCOM has maintained in section 3.35 that the originating provider has no option to purchase the MCT from the provider controlling the number.

Our experience in this area is that the four main network operators de facto stance in these situations, and most certainly with our numbers, is not to datafill the ranges whether they be at MTR or above MTR. During the consultation OFCOM also points out that 94% of all UK retail calls are, in fact, within bundle. We would not know this, on the basis of a refusal to datafill.

Our stance would be, as always been, it is difficult to classify yourself as having significant market power in an area in which the dominant mobile parties can dictate who, and who has not, got access to the UK market place.

Secondly, with regard to supply side substitution, this currently happens already. If the incumbent operator is charging larger margins than is considered appropriate on traffic into a terminating network, then deals can be done with wholesale carriers internationally to bring calls back in directly to the terminating party, at a more commercially preferable rate to both parties, when outside of the EEA.

In 3.47.2 OFCOM states 'Unless originating providers exclude calls to such numbers from inclusive call packages calls to such number will appear as calls to 'regular' mobile numbers to consumers.' Stating that higher MTRs exploit these retail models. Conversely however, there is no mention that calls to smaller MCPs that are charging standard MTR can then be billed anywhere up to 50p per minute from a dominant mobile network as being far more guilty of exploiting the end consumer. Notwithstanding this not being the consultation, but equally so in respect of 08 and 03 numbers.

Countervailing buyer power (CBP)

Our assessment of CBP is actually an agreement of sections 3.68 and 3.70 exactly with a different conclusion.

In 3.68 the MNOs could

- i.) Raise their own termination rate – *They are not allowed as it is set already*
- ii.) Refuse to interconnect – *That is what they do*
- iii.) Place calls outside retail call allowances – *If they do interconnect then this is generally the next step*

The consultation then goes on in 3.70 to say even if they did this there is no mechanism in which it would spill over into other originating providers.

This misses the point. Without a ubiquitously available mobile range within the UK, whereby customers of any of the dominant four MNOs could not reach the end user, regardless of what MCP they are on, said range becomes commercially defunct as a UK based number range.

In respect of 3.69 and BT's approach in said markets OFCOM have stated that BT's ability to use its own termination rates is constrained by regulation in such markets. We would differ from that opinion however, and especially out of EEA. Why would BT be constrained regarding the wholesale price they offer transit into the UK outside of Europe? Surely competition law would allow them to charge whatever they felt to be a fair and competitive price in open wholesale markets?

Again our stance would be that the main MNOs and BT, rather than the small MCPs, still hold any significant market power in these markets.

Consultation Question 4.1: Do you agree with our assessment of the harm that could result from a lack of effective competition in MCT markets?

There are areas in which we would agree with the consultation and areas in which we would disagree.

Refusal to supply MCT is still an ongoing issue with some ranges at standard MTR, requested being datafilled and still not being done by some of the MNOs. The statement that failing to connect calls could provide the originating providers at a competitive disadvantage is as far from the reality as could be imagined. The originating networks really are not impacted whether their customers can get onto any other networks other than BT and the three other MNOs. This is one area in which the dominant networks can use this as a tool to limit competition.

In the area of extremely high MTRs this is already being policed as it currently is. The MNOs do not datafill these ranges so they become defunct within the UK, and at these MTRs in the EEA do not become a viable product. The current status quo whereby they are advertised solely outside the EEA effectively reduces the risks about this to nothing. The concerns stated in 4.14 to 4.18 we see no evidence, or recent examples, of.

Consultation Question 4.2: Do you agree with our assessment that ex post competition law alone would not be sufficient to address the competition problems we have identified, and that therefore ex ante regulation is required?

We are in entire disagreement. Ex ante regulation should only be used in situations where there is a clear and present threat of something going wrong. Mobile termination rates and the situation we are currently have brought virtually no issues, no consumer harm and, in reality and opinion, no real requirement for this area of this consultation.

The competition ‘problems’ highlighted have been constructed under what can only be considered a theoretical situation if there had been no reaction and market realignment after the last market review. However there has been. The dominant MNOs and BT would always like further regulation to continue their dominance over the smaller MCPs, however to propose ex ante regulation in this market, to paraphrase is the largest sledgehammer smashing the smallest nut. It devalues ex ante regulation when actually required, and leads to mistrust over why existing regulatory decisions can no longer be trusted. We are entirely against this.

Question 4.3: Do you agree with our proposal to impose an obligation to provide network access on reasonable request on all MCT providers with SMP? If not, please why.

Yes, in total agreement. We would like to understand what enforcement programme is likely to be in place to ensure this does actually happen.

Question 4.4: Do you agree with our proposal to impose a charge control on all MCT providers with SMP is appropriate? If not, explain why.

We would continue to say that we see no requirement for this, and in your footnote 96 stating

‘Some smaller MCT providers are still charging above the regulated rate. However, the number of companies doing so has decreased significantly since the previous review’ going on to say an enforcement programme was addressing this, yet said enforcement programme was actually closed this month stating;

‘Overall our assessment found that the MTRs were priced in a manner consistent with the requirements of SMP condition M3, and we did not identify grounds in any case to justify taking enforcement action.’

We would consider the current situation to be appropriate for the market as it currently stands and there being nothing evidentially to suggest change being required.

Question 4.5: Do you agree with our proposal that LRIC should continue to be the appropriate cost standard? If not, explain why.

Yes.

Question 4.6: Do you agree with our proposal to apply the charge control to all calls, including those originated outside of the EEA?

Our stance is very clear on this matter. We are in total disagreement both at macro level and when viewing the bigger picture on this consideration, during the current state of affairs in the UK at this moment in time.

What we are being asked to agree to is regulatory intervention in our dealings with non EEA members during perhaps the most important political negotiations with the EU the UK has had in the past 50 years. To us it seems extraordinary that we could make a decision now to tie us to regulatory intervention in our trade with non EEA countries at a time when there is a specific timescale to leaving the EU, and our most important trading partners could turn out to be non EEA states.

Coupled that with the fact that in the EU only five other countries in Romania, Spain, Ireland, Slovakia and Sweden have also tied themselves with such a model, whereas the 17 other main countries' regulatory bodies have exempted calls from any caps or agreed reciprocity.

We enter a period whereby we must exit the EU in 2019 and yet could be tied until 2021 with our arms tied behind our backs in terms of trade against other EU countries, who could take serious advantage of this weakness.

We find the decision to even consider this at this time ill conceived, misjudged, and mistimed and we urge OFCOM to shelve this until a far more suitable time, when we are far more aware of how we are going to deal with our EU / EEA neighbours and our future further potential trading partners in non EEA countries.

To us it seems far more important to find the best way forward over the next three years for the benefit of British jobs and British commercial success, than tying us to regulatory caps that hinders business and our ability to compete on an equal footing with the majority of the rest of Europe.

Question 4.7: Do you agree with our proposal to remove the non-discrimination obligation on the four largest mobile providers?

We have no opinion either way on this matter.

Question 4.8: Do you agree with our proposal to remove the price transparency obligation on all MCT providers with SMP? If not, please explain why.

Yes, agree.

Question 5.1: Do you agree with our proposed modelling approach as discussed in Section 5, the supporting annexes and the 2017 MCT model? If not, please discuss the specific proposals that you disagree with.

Yes, agree.

Consultation Question - Conclusion

Question 6.1: Do you agree with our proposed approach to implementing the MCT charge control? If not, please discuss the specific proposals that you disagree with

We consider it appropriate, yes.

Question 6.2: Do you have any other comments on the matter raised in the consultation?

We consider most of the consultation as a continuation of the 2015 review and only really vary in opinion over terminology and implementation. We would, however, consider 4.6, as an extremely important and sensitive matter, in general. We believe it is vital for the country, and the regulatory bodies of this country, to take into consideration at this point in the political cycle of the United Kingdom, specifically the sensitivities around Brexit, and Brexit negotiations, and we would very strongly urge OFCOM to withdraw this clause immediately in order that we can take a view on this position once we are more aware of where the UK stands after Brexit with the EU, being in or out of the EEA, and with how we have considered our trade outside the EEA.

Consultation response form

Please complete this form in full and return via email to mct.2018@ofcom.org.uk or by post to:

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