



Response to Ofcom's Draft Annual Plan 2012-2013

Overview

kgb ('knowledge generation bureau') is a privately held, New York-based company and the world's largest independent provider of directory assistance and enhanced information services. kgb has built some of the most successful brands in the telecommunications, customer care and enhanced information services sectors.

In 2002, kgb (then known as InfoNXX) established 118 118 (The Number UK "TNUK") which soon became the largest and most well known provider of directory services in the UK. It currently handles over 40 million calls a year, providing both core directory services and a range of enhanced offer, advertising and other information services. kgb has also pioneered the provision of a broad range of wholesale and retail information services beyond traditional directory assistance services.

Non-Geographic Calls Review

The Number's interest in Ofcom's draft annual plan is primarily in relation to the work area '*Implement new regulatory framework for non-geographic calls*' which sits under strategic purpose 1 '*Promote effective and sustainable competition*' and is dealt with in paragraphs 5.11 and 5.12 of the draft annual plan.

The Number strongly supports this review, as we have since it was first announced in early 2010. Indeed, we have been pressing Ofcom to address these issues (particularly as they relate to directory enquiries) for many years.

Whilst we understand why Ofcom has listed the review as a 'work area', rather than a 'priority', The Number strongly believes that it should be treated as a higher priority than many of the other work areas, particularly those which are largely business as usual activity for Ofcom such as contributing to ongoing work being undertaken by others. This review is the culmination of Ofcom's efforts to address a problem which has existed for many years and needs proper focus and allocated resources.

Indeed, we continue to have ongoing (and ever-increasing) concerns about the timescales for this review, which are regularly being extended. Indeed, the fact that the work area is entitled '*Implement*' is perhaps somewhat optimistic, as actual final implementation is not in fact expected to occur in 2012-2013 or even in 2013-14 (see further below)

Timescales to date

Ofcom presumably began its work on the review in late 2009 or early 2010 in advance of publishing a 'Call for inputs' in April 2010. This was followed by its first detailed consultation on 16 December 2010, which closed on 31 March 2011.

Following this consultation, Ofcom stated that it would be publishing a further statement/consultation in September/October 2011. Since that time, the date for publication has slipped several times and (as far as



we are aware) currently stands at 'by the end of March 2012'. This suggests that the timescale indicated at paragraph 5.11 of the draft annual plan (that "*We will be publishing a detailed proposal for regulation in early 2012...*") is arguably already at risk. In any case, it is still six months later than previously planned; a year after the second consultation closed; and over two years since the review began.

Furthermore, when Ofcom stated that it was due to publish the statement/consultation by the end of 2011, it also stated that it would publish the final regulation in September 2012. Therefore, it seems likely that this date has probably now slipped until the end of 2012. In addition, we understand that Ofcom now intends to publish a further technical implementation consultation after that date. Following that consultation and once the regulation is finalised probably around March 2012, the actual implementation process will begin and Ofcom currently believes this will take 18 months.

As a result, Ofcom envisages final implementation of the changes will take place in late 2014 at the earliest. This will be 5 years after Ofcom first began the review. Unfortunately (and for reasons further explained below, which Ofcom will surely understand) The Number can have no real confidence that there will not be still further delays, which push the ultimate final date even later. Past history might suggest that this may be more likely than not to occur.

As an aside, it should of course also be noted that this 5 year timescale only in fact refers to Ofcom's current review of non-geographic call services, which itself follows early failed attempts at addressing problems with non-geographic numbering dating back to at least 2006.

Purpose of the Annual Plan

In order to remain credible, The Number believes that stakeholders must have some confidence that the annual plan is in fact accurate and that Ofcom will deliver in accordance with it. Regrettably this is not always the case.

We note, for example, that the 2011-12 annual plan (which is still current today) states at paragraph 4.9:-

"In early 2011/12 Ofcom will complete a strategic review of the market and begin implementing the policy outcomes of the consultation."

In fact, a year later, the review is far from complete and Ofcom is proposing that implementation will only actually begin around March 2013, i.e. the start of the 2013/14 year.

Even a year earlier, in its 2010-11 annual plan, Ofcom stated at paragraph A1.42:-

"Ofcom intends to carry out a strategic review of non-geographic calls in 2010/11."

The Number is acutely aware that the delays encountered in the non-geographic review are by no means unique and Ofcom's ongoing review of consumer switching (following previous attempted reviews of mobile number portability) provides another stark current example. But the fact that such delays appear to be accepted within all levels at Ofcom as simply normal practice should be a matter of great concern to anyone with an interest in Ofcom's efficient working, most obviously Ofcom itself.



Reasons for delay

Ofcom must surely agree that such continual delays and protracted timescales for delivering even relatively straightforward projects (such as non-geographic numbering policy) do not suggest a close adherence to its primary duty of furthering the interests of consumers.

We are aware of Ofcom's view that the current appeals process (and willingness of some large operators regularly to utilise it) is largely to blame for the additional work which leads to the extended timescales. We support reform of the process and we have made representations to the Government in that regard.

However, we do not accept that this is the sole (or even primary) reason for delay. Many Ofcom decisions are not appealed and even those that are, are likely to be so regardless of how many months or years Ofcom has spent in advance refining the regulation, simply because of the decision which Ofcom has ultimately made. The CAT has shown itself to be sufficiently flexible in its handling of appeals that no amount of work in advance can guarantee Ofcom a successful outcome in any appeal. Unfortunately, we believe that many of the reasons for delay are almost institutional within Ofcom and have simply become the 'accepted norm' over the years since its creation.

Furthermore, it is easy in the case of any specific project, for Ofcom to identify particular reasons for its delay, but these are generally foreseeable in advance. For example, Ofcom may point to the ongoing 0800/0845 litigation as a reason for delay to the non-geographic calls services review, but in reality those original disputes actually began even before Ofcom published its initial 'Call for inputs' in April 2010. Indeed, Ofcom said explicitly at the time, that the disputes/appeals were not a reason for delaying its review, which would continue regardless and without being directly impacted.

Unfortunately however, projects such as the non-geographic call services review always seem to be pushed lower in Ofcom's list of priorities behind matters such as litigation and market reviews, which have deadlines that Ofcom generally cannot move or delay.

In essence, this highlights the core problem. In situations in which Ofcom has deadlines which it must meet, it generally does so. But where no such constraints exist, its timescales for completing projects sometimes appear to extend almost indefinitely. This is not as a result of the mechanics of the appeals process, but rather seems to be an internal approach to working, prioritisation and adherence to its own intended timescales.