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26th November 2010

Ofcom
Consumer Affairs – Strategy & Market Developments
6th Floor
Riverside House
2A Southwark Bridge South
London SE1 9HA

Reference Ofcom's Strategic Review of Consumer Switching.

Dear Gavin,

TSL would wish to submit the following response to the Strategic Review of Consumer Switching.

In essences we believe that the review needs to include Geographic Number Portability and four main areas in particular.

- That the BT process is too cumbersome and Ofcom should stand by its preference for competitive neutrality. We are a number of years on in the practice of NP and without re-inventing the wheel effective improvements can be made to the process.

- Operator porting is constricted by the loose wording of GC 18 'as soon as it is reasonable practicable on reasonable terms' and on Ofcom's apparent reluctance to require 'slow operators' to comply with the GC

- Subsequent porting is just too complicated altogether.

Whilst the CAT of 2008 decision on UK Porting may be putting Ofcom off, the issue does needs to revisited as a matter of urgency.

TSL looks forward to discussing with Ofcom Number Portability in forthcoming workshops.

We wish Ofcom to treat Annex's two and three as confidential.

Regards,

Alexandra Jennings
On Behalf of TSL / Gradwell / AQL

Consultation Response from TSL, Gradwell and AQL, supported by VTL UK and Timico.

All participating businesses in UK telecommunications and most consumers would agree that a strategic review of consumer switching is completely necessary and could produce important improvements to consumer welfare and increased competition.

We strongly believe that the current arrangements do not serve consumers well and that the market exhibits failure symptoms as described in paragraph 2.33 of the consultation.

Telephony Services Limited (TSL) is owned equally by Gradwell dot com Ltd and (aq) Ltd. TSL has their own number allocations which in turn are sub-allocated to both (aq) Ltd and Gradwell. TSL has been in operation since 2004 and in 2007-8 it accelerated the growth and expansion of its network.

Gradwell dot com & (aq) Ltd are leading providers of internet technology services to UK business and we operate in innovative markets. The combined group turnover is circa £7m with a work force of approximately 60 staff. The Hosted IP Telephony Market Place suggests we hold a significant position in the top three service providers, with over 25% market share for UK Hosted PBX services in the small business space.

Gradwell dot com Ltd is listed as 4th fasted growing technology business in the South West, according to Deloitte's Fast 50 rankings for 2009.

The many issues Ofcom identifies within the consultation document are an indication of the sensitivity and risk associated with this area. It is important to acknowledge the fact that nearly all of these issues have been well known to the industry for some years and that industry discussion, negotiation and project working have been taking place on the subject during all of that time. In this sense, a strategic review of this nature could have been performed some time ago. As a result of this delay considerable negative impacts on business efficiency and competition have occurred.As Ofcom stated at the recent switching workshop, the focus of previous work has been tactical rather than strategic, so one hopes the new approach will bring results.

This submission seeks to respond to questions raised by Ofcom and also addresses the need for Ofcom to review the number portability processes as part of the switching review. This submission highlights basic flaws in the number portability regime in the UK which prevent customers (both residential and business) from switching between providers as efficiently as possible.

We believe that in undertaking a strategic review of switching, Ofcom must ensure that all current processes are reviewed and measured against the proposed greenfield approach. We think it likely that this will resurrect issues, (in our view unresolved) as to the effectiveness of current switching mechanisms and the practical difficulties of changing those long-standing processes. We would wish to see concrete proposals for the implementation of the changes that will be necessary for upgrading current switching processes to any new greenfield standard.

There is little coverage of number portability in the document and the primary request of this response is that the significance of an efficient number portability process is acknowledged as a necessary 'corner stone' of switching and that it be dealt with much more explicitly in the next phase of work. Number porting is an intrinsic part of the switching processes that exist in the UK industry and must be addressed if this review and its outcomes are to be effective. In paragraph 4.11 of the consultation, it is stated that around 48% of UK households now buy two or more communication services as part of a bundled package. We feel that as far as the migration of communications services is concerned, the

current process employed for porting fixed line numbers in the UK remains a weak part of the process.

Ofcom does refer to the schedule for improvement to mobile number portability (MNP) processes in the document. This relates also to the BIS consultation on Framework Implementation, which refers to Ofcom's powers to enforce GC18 and the potential for consumer compensation for delay in porting.[1] MNP benefits from the existing PAC process and implementation systems that work effectively, albeit through use of a losing provider led process. Significant problems affect geographic number portability (GNP) in the UK, such that no reliable process exists and it is often virtually impossible for numbers to be ported between providers because of the lack of process and any incentive for losing operators to establish service arrangements.

The following addresses questions raised by Ofcom in the consultation.

Question 1: Do you think hassle is a key issue we should tackle in this review?
Please provide an explanation for your answer and any supporting evidence.

Yes, but a clear perspective must be gained on the issues around switching and the stakeholders affected by them before devising solutions that minimise hassle. Issues of experience of that type must be set against other factors such as competition, cost versus benefit and industry practicality.

Question 2: Do you agree there is a lack of clarity about the switching processes that consumers need to go through to switch and this may create a barrier to switching?
Please provide an explanation for your answer and any supporting evidence.

Yes. Descriptions of the type of lack of clarity and confusion experienced are provided throughout the consultation document by Ofcom and have been well documented in previous work.

Question 3: Do you think clarity is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.

Yes, but by seeking ways to unify and simplify, so more clarity is easier to achieve.

Question 4: Do you think continuity of service (including unwanted breaks and double billing) is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence

Yes, this is fundamental to a high quality consumer experience and the type of service that the UK should demand for consumers.

Question 5: Do you think the ability of providers to frustrate the switching process is a key issue we should tackle in this review? Please provide an explanation for your answer and any supporting evidence.

Yes, issues with number portability are the focus of most of this response and they represent a key example of the frustration of switching processes.

Question 6: Do you think consumers' experience of save activity is a key issue we

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[1] Implementing the Revised EU Electronic Communications Framework – Overall approach and consultations on specific issues-paras 205-207 BIS September 2010

should tackle in this review? Please provide an explanation for your answer and any supporting evidence

Not necessarily, although it is an element of any review and is permitted under current processes. There is a danger that widening the focus too far from switching processes will lessen the ability to improve them, even if other areas are worthy targets for attention.

Question 7: Are there issues specific to either residential or business consumers' experiences of the switching processes that you think we should tackle in this review? Please provide any evidence you have to support your views.

All fixed line porting issues, covered below in this submission.

Questions 8 – 15

Ofcom is offering good analysis and a sound basis for proceeding with industry and consumer inputs during the review. The GPL model is the correct one to follow, as long as detailed assessment based on practicalities and industry involvement is carried out. Solutions must be fit for purpose and derived by practical reference to essential requirements for each relevant product. The use of a matrix to assemble all products and features would enable thorough and accurate analysis and prevent haste producing bad results.

Question 16

Please see below. It is imperative that Ofcom properly accounts for issues to do with number portability.

The following addresses issues concerning number portability that are relevant to this strategic review.

Geographic number portability background

Geographic number portability (GNP) has existed in the UK since 1997 and is a fundamental part of the European and UK legal framework that provides consumers with the rights and ability to switch between telecommunications providers. The regulatory framework for GNP and the processes that support it have not significantly altered since introduction, despite a great deal of resource and time having been expended on the subject in recent years.

In November 2007, Ofcom concluded a major review of number portability for consumer switching by mandating direct routing and a common database (for GNP and MNP) and changes to the MNP manual process. This led to the establishment of an industry group, UK Porting, which was created to progress these important changes to their conclusion. Ofcom's decisions were successfully appealed and set aside by the Competition Appeals Tribunal.[2] In April 2010, Ofcom published a statement abandoning the concept of direct routing and recipient-led processes for MNP. Since then, in July this year, Ofcom has modified GC18 for MNP to improve timescales for porting and the PAC process (moving to a recipient-led process). The changes are due for implementation by April 2011 and this is mentioned in the strategic review consultation document.

The amount of effort that has gone into reviewing porting processes and rules is a good indication of how important they are to the competitiveness of the UK industry and welfare

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[2] Vodafone Limited v Office of Communications 1094/3/3/08 21/01/08

of UK consumers. While there may have been good legal and economic reasons for turning away from direct routing, that doesn't mean that industry and market problems associated with the perceived need for it do not exist. Some changes are yet to come to MNP processes, but the current status of GNP is as it has been for ten years, with all the problems and inefficiencies suffered during that time.

Issues with existing process

The GNP process has not changed in any meaningful way since 2000. As one would expect, it was built on the porting of numbers from BT to competitive operators and BT has largely defined the process and billing structure over the years. Other large fixed operators have also had an important influence on the development of GNP, due to the fact that much market development involves the transfer of numbers from them to smaller competitive providers.

The existing process is complex and cumbersome, involving commercial arrangements, technical solutions, testing and billing. It is not a regulatory requirement and it does not entail a solution and method of implementation that is identical for all participants. It does not reflect changes to intelligent network platforms that have developed over the last decade. The process, or set of processes, that exists, cause inefficiencies and unnecessary cost to operators trying to use it and inconvenience and obstruction to consumers (residential and business) that rely on its existence for their ability to switch providers. The many problems that arise within the current GNP environment serve to limit competition and unfairly benefit incumbent large fixed operators, as well as preventing new entrants into the market from providing timely connections for customers.

The current GNP End to End Process Manual has been developed by an industry group, but all participants in the sector do not consistently adhere to this. Indeed not all operators are represented on the group. Most significantly, BT follows an alternative process of it's own and the differences serve to introduce difficulty and failure into the GNP environment. Although one could reasonably expect an industry manual to represent a 'reasonably practicable' process by 'reasonable terms', in accordance with the language of GC18, this has not been tested and GC18 is too vague to be able to support any enforcement that could help address the problems experienced by providers seeking to port numbers from major operators.

Examples of failures of the process can be provided, as well as examples of the differences between the process followed by BT and the industry-agreed manual. Please see Annex 1.

Issues with commercial situation and incentives

In order to successfully port geographic numbers, an operator must interconnect with the donor network or have a transit arrangement in place with another network that does. This situation looks set to continue indefinitely in view of the failure to introduce direct routing or an automated order 'hub' in the UK. If a competitive operator cannot establish these arrangements, then it will never experience the difficulties of process described above and it will be unable to implement the number portability that is demanded by European and UK law and should be enforced by GC18 (see below for further points on enforcement).

There have been many examples of failure to establish porting agreements over the years, be it for reasons to do with network configuration, billing systems, charging arrangements, testing methodologies or other issues. If an operator can prove that a potential donor is effectively refusing to port numbers, despite the wishes of the consumer, it should be able to take any dispute arising to Ofcom for resolution. This does not happen because of the

nature of the processes described above and the lack of clear rules coming out of the regulation. It is too easy for the potential donor to frustrate the process and halt progress at a commercial level in such a way that it is very difficult to make a case for contravention of any regulatory requirements.

There are commercial incentives for losing operators (donors) to frustrate the GNP process. These include avoidance of cost associated with implementing the ports and the retention of traffic and charging arrangements made possible by preventing porting. Ofcom mentions competitive neutrality in the consultation (section 6.35), in relation to advantage gained by providers as a result of switching processes used. We agree that competitive neutrality is very important and that there should be no implied incentives for operators to slow down the progress of switching.

GC18 and enforcement

As mentioned above, the language of GC18 is not prescriptive enough to allow for effective enforcement. Unless the concept of 'reasonable' is linked to defined processes and commercial arrangements, then operators inclined to frustrate GNP will be able to talk away any complaints. The fact that Ofcom has tried to introduce changes to the regulations that improve the situation with technical solutions in the recent past, clearly indicate that there is a need for change. Rules are tightening for the mobile sector, but the argument appears to be that a similar state cannot be reached for fixed lines because of legacy networks and other technical issues.

This should not be the case. Ofcom should be able to review GNP and mandate a process that works fairly for all industry participants and supports the principles of choice and competition that the market depends on. Once a process is defined, this should enable guidelines for commercial arrangements that clarify timescales and allow enforcement on the basis of a single interpretation of what is acceptable. There should be no ability for a provider to frustrate number portability without inviting regulatory sanctions.

Effect on consumers

The concept of number portability exists to protect the right of consumers to exercise choice in a competitive market. The current problems with GNP processes, commercial difficulties and regulatory enforcement mean that the market is liable to fail consumers as operators find themselves unable to effect the porting required to provide the consumer with the service they wish to purchase.

This situation is unacceptable and in conflict with the values upon which the UK's competitive telecommunications industry has been built.

Recommendations

The next stage of this strategic review should take account of the issues with GNP covered in this submission (along with equivalent issues with MNP, as appropriate) and explicitly deal with them in the context of previous regulatory investigations and the aims of the review to ensure efficient and effective consumer switching.

It is suggested that an industry group should assemble process issues and examples to illustrate the problems that must be addressed and inform the regulatory activity. Ofcom mentions cost assessment in the consultation (section 6.37) and this must be a part of the input provided by industry.

Ofcom should be open to the concept of amending GC18 so that it becomes enforceable, not only in relation to BT and other major operators but across the breadth of all operators. GC18 and the number porting process development should take account of commercial and technical reality.   In any event Ofcom needs to review GC18 as part of the Framework Implementation process.

The outcome of this current Ofcom Review, focused as it is on consumer welfare and competition, should address the current failing of the current number portability regulations and processes.

Confidential Annexes

Annex 1

Key differences between the industry GNP commercials and Process Manual and the process followed by BT.

With respect to the commercial negotiations as mentioned throughout this paper GC18 does not provide efficient recourse or certainty and this is most keenly felt at the start of the GNP process when attempting to construct the commercials.

BT provide all their NP schedules as 'business as usual', therefore there is no discrepancies between requesting inclusion of 'ring back when free' verses any NP schedule into an interconnection agreement, the aim by BT being three weeks from request to inclusion. However, for any other operator, as previously mentioned, there is the ability to prolong this initial stage of implementation by years.

Whilst the wider industry uses the processes manuals BT's process is much more time consuming and resource hungry.

For service establishment with Another operator there is straight forward process relating to three key steps, 'Planning Request form', 'Planning Databuild Information' (PNI), 'Planning Network Information' (PDI), however with BT this is extrapolated out over the various regions due to parenting and geographic constraints of the network. Therefore a process which under the majority of GNP contracts is stipulated to take ninety days can take upwards of eighteen months to two years with BT.

Annex 2

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Annex 3

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