

Emma Taylor
4th floor, Competition Group
Office of Communications
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Our Reference:
Your Reference:

Head Office
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

Telephone: 01738 456401
Facsimile: 01738 456415
Email:

Date: 16 September 09

Dear Emma

Mobile Sector Assessment: second consultation

We recognise the importance of this consultation within Ofcom's wider review of the future of regulation of the mobile sector and welcome the opportunity to comment on the above document. SSE provides fixed line telephony services to retail customers using available wholesale products such as wholesale line rental (WLR). We do not offer mobile services but are interested in the development of open and contestable infrastructure platforms generally, including the mobile networks, such that competition in the provision of services using the range of communications infrastructure is further developed.

Our specific answers to the consultation questions are attached as an appendix.

We hope these comments are of interest and would be happy to discuss them further.

Yours sincerely

Aileen Boyd
Regulation Manager

Consultation Questions

Section 2 – Introduction

Q2.1 Do you agree with our principles for mobile regulation?

We support the principles set out at paragraph 2.23 of the document and also the vision for the sector described in paragraph 2.19. However, we would like to see greater emphasis in the latter on the benefits of a wide choice of competing retail service providers as well as of encouraging competing providers of mobile network infrastructure.

Section 3 – The changing market environment

Q 3.1: Are there any additional sector trends that we should consider in our analysis?

This section of the report provides a comprehensive review of many trends in the mobile sector. Our major comment here is that we see a role for a market body in assessing the trends in the market and developing market processes accordingly in order to maintain positive customer experiences.

The Digital Britain report has, rightly in our view, highlighted that the UK's communications infrastructure should be considered as a "utility" infrastructure. In other utilities, including gas, electricity and water (where service competition exists), market bodies have been created to maintain and develop market processes in a transparent manner and with regulatory oversight, for the continuing benefit of customers and competition. All relevant market players are required to belong to these bodies, which can amend processes to cater for developing trends or issues in the market on faster timescales than the relevant regulatory bodies acting alone.

We consider that the communications market would benefit from a similar approach.

Q 3.2: Have we identified the right regulatory challenges?

No. In our view, Ofcom should be considering how to require the mobile market to develop a sustainable approach to its own market governance that requires the involvement of all the relevant players and allows Ofcom to have appropriate influence over the direction of development through co-regulatory arrangements. If this was set up, we believe Ofcom could step back from long term involvement in addressing issues that have led to concern and instead let the market adapt its processes proactively as issues arise.

Section 4 – Competition and new entry

Q 4.1: We have outlined a number of factors which may affect the future market structure, including network sharing, spectrum and potential consolidation. Do you agree with this assessment, including risks and benefits that we have outlined?

Q 4.2: Do you see any risks to competition that we have not highlighted?

Q 4.3: Do you agree that a market review in the mobile sector (other than in the call termination market) is not currently required?

Q 4.4: We have concluded that competition in the mobile sector is currently addressing access concerns adequately. Do you agree?

Ofcom's assessment would appear to have been overtaken by the recent event of the proposed merger of Orange and T-Mobile. We do not believe that existing levels of competition are adequately addressing access concerns and are of the view that Ofcom should undertake a more detailed review.

With regard to new entrant operators, Ofcom notes at paragraph 4.61 that it has taken upwards of three years for these new entrants to conclude the necessary

bilateral number porting arrangements. Although Ofcom suggests in paragraph 4.93 – 4.98 that it will increase its attention in this area, we believe that more could be done to develop market processes that make number porting arrangements operate more efficiently. These market processes would be a key element of the market governance arrangements we have mentioned above.

In relation to the new service providers in the mobile market – known as mobile virtual network operators (MVNOs) as they do not necessarily own any infrastructure themselves but use wholesale arrangements with existing network operators – Ofcom notes that there are around 25 of these at paragraph 4.27. While this indicates that a level of service competition exists, we believe that Ofcom should assess the quality of that competition. There is no comment in the document on the terms and conditions associated with the relevant wholesale contracts. In the absence of transparent and non-discriminatory terms for access, we would be concerned that smaller MVNOs may have less favourable terms than others with more negotiating power. We do not believe that such an outcome is a good basis for developing competition in the provision of mobile services.

Ofcom also states in paragraph 4.90 that it would become concerned if mobile operators restricted wholesale access to MVNOs. As with Ofcom's comments on number porting arrangements, we are concerned that Ofcom can only gather evidence to act in the event that damage has actually been done to competition. Regulatory action seems necessarily retrospective whereas we believe that what is needed is the development of a market framework that is charged with proactively developing and amending processes to avoid detriment to customers and competition before it arises. If Ofcom had concerns about particular areas where it might eventually use its powers to intervene, it could then signal to the market body that these areas needed to be addressed.

Section 5 – Investment

Q 5.1: Do you agree with our assessment of investment in the UK mobile market and our priorities to secure future efficient investment?

We have no comment on the current state of investment in the UK mobile market but we do support the development of an environment where investment by new entrant network and service providers could be encouraged. For service providers, our view is that this would require open, non-discriminatory access to network infrastructure and the transparent market governance arrangements that we have discussed above. Similarly, new entrant network providers would benefit from market governance arrangements and would also need a clear framework for standards of technical and commercial inter-operability at various levels of network connectivity. This would allow them to assess whether a particular network extension was feasible.

Section 6 – Consumer protection and empowerment

Q 6.1: Ofcom considers that regulatory intervention to protect and empower consumers continues to be needed in the mobile sector and that competition alone is not necessarily sufficient to secure this. Do you agree?

We are firmly of the view that regulatory oversight of the market continues to be necessary. We would advocate that this evolves towards the governance arrangements that we have outlined above, so that market players are empowered to develop market processes to allow competition to flourish and the consumer experience to be protected. We would expect these developments to take place within the framework of a guiding set of objectives agreed between Ofcom and the industry, implemented on a co-regulatory basis.

Our understanding is that co-regulatory arrangements, which do provide Ofcom with an ongoing role, could be designed to require the participation of all relevant players in a way that self-regulation cannot. This may need the imposition of formal regulation to establish the requirement for participation, but once established we would expect the initiative and work plan to be developed by the industry as a whole, subject to overview and direction in some form by Ofcom. Thus, in contrast to Ofcom's comments in paragraph 6.61, we believe that co-regulation could be appropriate even if individual companies would rather not participate.

Q 6.2: We believe that the approach we take to consumer protection and empowerment in the mobile sector strikes the right balance between taking timely action when necessary, and the need to apply regulation only when effective and proportionate. Do you agree?

We support Ofcom's emphasis on the promotion of competition as the chief means of ensuring that customer's interests are furthered. However, as discussed earlier, we are not convinced that retail service provision in the mobile market is as competitive as it could be. With a greater number of retail service providers, we believe it is likely that Ofcom's concerns about, for example, complexity of tariffs, would be addressed by the wider market.

Q 6.3: Are there any areas relating to mobile services that Ofcom is not currently addressing but which it needs to address in order to achieve its consumer policy objectives? Are there other areas where regulation could be scaled back?

One of the key areas where work is needed, in our view, to support Ofcom's consumer policy objectives is the overall switching process for customers in the mobile market, as in other markets. For mobile switching, number portability is a major component of the process and we note that Ofcom is considering this area. As discussed above, we believe that some of Ofcom's other objectives are more likely to be achieved if there is a greater level of competition in the retail market, supported by access requirements on network providers and transparent governance of market processes.

If the above is achieved, we believe it follows that Ofcom's role in the market could be scaled back as the industry itself takes a more proactive role in managing the market. Another area where we believe that the burden of regulation could be reduced is in the regulatory requirements involving detailed and prescriptive mandatory codes of practice. We have welcomed Ofcom's recent initiatives to replace the mandatory code dealing with measures to avoid mis-selling with a more general high level obligation and consider that this approach could be extended to detailed obligations on numbering information, for example.

Section 8 – Coverage

Q 8.1: Do you agree that our proposed facilitation role around mobile not-spot issues is a realistic and sensible thing to do?

We agree there should be attention paid to developing an effective approach to mobile not-spot issues. It appears to us that developing a framework for inter-operability as discussed above could allow efficient investment by new entrant players such as locally based entities. These may be able to obtain local support in order to finance investment in local infrastructure that will address local "not spots", provided that some certainty of the commercial and technical framework is available. Issues that would need to be addressed, in our view, to encourage this form of investment, include: published expectations of costs for various forms of interconnection; and the existence of technical standards for such interconnection.

Q 8.2: Do you agree with our general approach set out in the table above? Are there any other actions we should take and why?

We support Ofcom's general approach but would like to see a greater emphasis, under the heading of competition, on encouraging investment by new players. We believe that contestability of infrastructure investment could be further developed through the approach discussed above.

Section 9 – Mobile content

Q 9.1: Are there any additional issues about mobile content and accessing content via mobile that should be considered?

Q 9.2: We have set out some differences between accessing content via the fixed internet and via mobile. Are there any further differences?

No comment