



The Number UK Ltd, Hedges House, 153-155 Regent Street London W1B 4JE UK
Tel +44 870 233 1000 Fax +44 870 233 2200
www.118.com

11th February 2009

Response to Ofcom Annual Plan 2009-10

Introduction to The Number UK Ltd

Launched in 2002, The Number is the market leader in directory assistance in the U.K. 118118 offers much more than traditional directory enquiries services. Customers can get the information they want by calling, text messaging, or going online to www.118.com. Every week millions of customers are given the information they need to reach the people, places, and businesses they want to connect with.

The Number and its group companies in Europe (Le Numéro, Il Numero, Die Nummer and Conduit), together form the largest independent provider of directory assistance services in the world. In Europe, the group has entered six markets (UK, France, Italy, Austria, Switzerland and Ireland) offering new, competitive and high quality services to end users.

1. What are your views on the continued relevance of Ofcom's three-year strategic framework for the proposed work programme in 2009/10?

We broadly agree that the three year strategic framework remains relevant.

2. What are your views on Ofcom's proposed policy work programme and top priority areas for 2009/10?

One of the success stories of the telecoms market in the UK has been the level of competition in the 'service layer' and the resulting range of products available to consumers. Historically, the first boost to this industry was Ofcom's attempts to liberalise the market environment and to gain access for 3rd parties to dominant networks such as BT's, and to introduce regulated terms for 3rd party access to billing and interconnection to the majority of UK consumers that had a telephone line. Subsequent iterations including the NTS regime and local loop unbundling have brought subsequent waves of service provider led innovation, and benefits for consumers.

We are now at a point in the evolution of the telecoms market where mobile networks are a primary telephony device for more and more people, and where services such as VoB (Voice over Broadband) services are substitutable for more traditional Fixed Narrowband Retail voice products, and are increasingly being marketed as such (i.e. a technically different product, serving a similar consumer need). In keeping with the fundamental principle of technological neutrality, converged services mean that regulation needs to

look at the consumer demand,, not the technical means of delivery to satisfy that demand.¹

We have gone from a point in the market where the majority of customers (using traditional Fixed Narrowband Retail services) could be accessed by service providers with some level of commercial and regulatory certainty (and so could justify investment in innovation), to one where a huge percentage of the addressable market is largely unregulated for access, billing and interconnection as they are using VoB services or mobile phones.

It is to be noted that, in the WIK/Cullen Study for the European Commission conducted in March 2008 on “The Regulation of Voice over IP (VoIP) in Europe”, they point out that “*More recently, voice over broadband (VoB) has been interpreted as a substitute for PSTN-based fixed line telephony in several market definitions followed by NRAs in the course of their market analyses under the EU framework.*” (p. 25)

Moreover, in the European Commission’s Explanatory Note to the reviewed Relevant Markets Recommendations, the following statement is made: “*The experience so far under the market review procedure indicates that voice over broadband (VoB) services have increasingly become available across the EU. Substitutability between VoB and narrowband telephony depends on a number of factors such as product characteristics, numbering, quality of service, prices, broadband penetration etc. In countries where broadband penetration is significant, VoB services may exercise a competitive constraint on narrowband telephony services, provided that it is not possible for the incumbent operator to price discriminate between consumers that only have a narrowband connection and consumers that also have a broadband connection. Where substitutability exists, VoB services should be treated as part of the retail calls markets. On the basis of quality differences and product characteristics (e.g. whether conventional handsets can be used and/or whether a connected computer must be switched on in order to receive calls), unmanaged VoB services appear for the time being to be less of a substitute for narrowband telephony than managed VoB, but that distinction may disappear over time as the quality of unmanaged VoB services improves and technical features change. In the absence of any regulation (at retail or wholesale level), the incumbent public telephone network operator(s) would face little competitive constraint in terms of price or quality of services and customers would have little choice of supplier in relation to either access or calls (with the possible exception of large business users).*” (p.23)

We do not yet have adequate regulatory provisions in place to ensure the continued livelihood of telecoms service providers in the UK and this issue needs to be urgently examined and addressed in the following 3 themes that Ofcom has identified for the 2009/10 work programme.

¹ The Commission Recommendation of 17 December 2007 on relevant products and service markets within the electronic communications sector susceptible to ex ante regulation (hereafter “the Relevant Markets Recommendation”) specifies that “*The starting point for the identification of markets in this Recommendation is the definition of retail markets from a forward-looking perspective, taking into account demand-side and supply-side substitutability.*”

1. *“Promoting competition in fixed telecoms”*
2. *“Enabling clear regulation for next generation access and core networks”*
3. *“Assessing our regulatory approach in mobile”*

We therefore wholeheartedly support these 3 focus areas of activities.

However, it is vital that Ofcom cohesively address policy in these areas in order to ensure that service competition is adequately protected in a converged environment where all these platforms come into play as delivery channels.

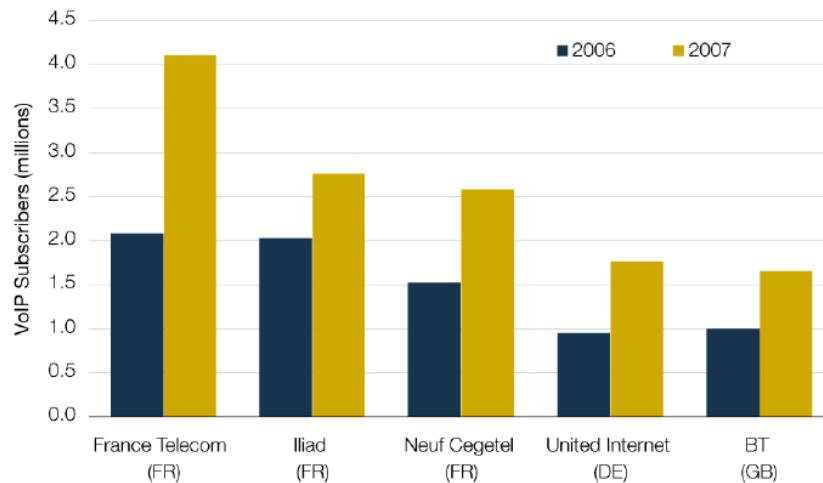
The Number would urge that Ofcom add a horizontal workstream to its plans, to focus on the regulatory impact of its plans and processes to service provider community, and the consumers they serve, and innovation they provide. This workstream needs to carefully consider the need for ex-ante regulation to enable a suitable economic environment where service providers can flourish, invest and innovate to enable the UK to lead the world. This needs to cover mobile regulation, landline regulation and NGA at a minimum. If this is not adequately addressed now, UK plc will unknowingly walk towards a Digital Britain that has access pipes for converged services served by mobile networks and landline networks, with network operators controlling the services that are made available, and so greatly reducing product and service innovation. The result will be a decimated telecoms service provider community that is unable to provide the converged innovation and services needed to drive consumer uptake and economic benefit that the Digital Britain vision seeks to achieve.

Promoting competition in fixed telecoms

The Number welcomes the review of the Fixed Narrowband Retail voice market and urges that it be conducted promptly, in particular assessing the inclusion of VoIP/VoB services in the relevant market and the imposition of obligations on SMP operators.

A Telegeography report of September 2008 demonstrates that, whilst VoIP traffic has undergone a boost over the last two years (the number of consumer VoIP subscribers having gone from 15 million in 2006 to 25.3 million at year-end 2007), **94% of this traffic stems from traditional network operators**, namely incumbent operators, alternative DSL providers and cable companies, providing Voice over Broadband (VoB).

Top Five European VoIP Providers, 2006-2007



Source: TeleGeography Research

© 2008 PriMetrica, Inc.

Maintaining current regulation:

BT inherited a position of market dominance and monopoly by virtue of its historic position in the marketplace. This was built up by the money and investment of UK consumers buying a monopolist's products. BT therefore has a duty and a role in the UK telecoms marketplace above all other companies to create an environment for consumer innovation by 3rd party providers in addition to its own innovations. This should not lightly be given up. Ofcom must pay close attention to this and ensure that BT is not given new privileged monopolistic rights in NGA settlements and landline market reviews.

- It is imperative that Ofcom continues to require regulation in the Fixed Narrowband Retail market including retaining duties of Equivalence and cost-orientation for access by service providers to BT's customers.
- BT's undertakings must be managed carefully to ensure that the spirit of them is adhered to, as much as the letter of them.

Including VoB in the market:

In Ofcom's statement - 'Regulation of VoIP 29th March 2007, Ofcom noted that:

"Ofcom expects that in time VoIP services will increasingly act as a competitive constraint on traditional voice services to the degree to which they may be considered in the same market. Without Ofcom having carried out the relevant market analysis, we cannot confirm whether or not we have reached that point today..."

Ofcom has set out its intention to carry out a market review of telephony markets, including the supply of Voice over Internet Protocol (VoIP) services. In line with this commitment, Ofcom plans to review voice markets at both the retail and wholesale levels and will need to consider the extent to which (if at all) services delivered via VoIP technology act as a constraint on traditional

services. Ofcom also intends to consider the substitutability between fixed, mobile and VoIP services. “

- Duties on network operators who are dominant for the provision of fixed telephony should be extended to cover VoIP based telephony products such as the BT Broadband Talk product which are equivalent to traditional landline voice products.
- Technical developments such as VoIP cannot be used as an excuse to side-step regulations on products that are substitutes for customers, and to leverage historic dominance in narrowband telephony into other areas.
- Specific areas of concern include access from BT’s Broadband Talk product and BT’s willingness (or lack of it) to continue to make complete subscriber contact listings available on cost-orientated terms for Directory Enquiries.
- Changes in the markets mean there are now VoIP services that are equivalent and substitutable to traditional telephony products. This is certainly true for VoB services, where the customer experience and perception when placing a voice call is comparable to that of placing a voice call using POTS.
- These products are in some cases being used to side-step regulations. As already recognised by a significant number of NRAs and reflected in the new definitions proposed for inclusion in the new EU Regulatory Framework, services such as BT Broadband Talk are equivalent to PATS and need to be regulated in the same way as BT’s Fixed Narrowband Retail products.
- In the market review, Ofcom must focus on this issue and ensure that principles of Equivalence are adhered to, and that services that have traditionally been offered cost-orientated access on BT’s landline network (such as billing and interconnection terms for Directory Enquiries, NTS services), are offered similar regulatory certainty for VoIP based services to ensure competition at the service level.
- Equally, as other NRAs have already done, Ofcom should require inclusion of VoIP numbers in subscriber data made available to providers of Directory Enquiry services.

Enabling clear regulation for next generation access and core networks

The move to Next Generation Networks will affect all future telephony services and regulation of this new environment will be key to consumers continuing to benefit from the innovation of service competition. Much of the growth and innovation we enjoy today has, indeed, been as a result of innovation and competition instigated or driven by service providers and existing rules on access in the traditional narrowband environment have substantially contributed to this success story. Most of the discussion on NGN until now has been focussed on the physical network, but there needs to be increased awareness and consideration now of the downstream effect of decisions on access rules.

- Focus needs to be placed on the value and innovation brought to UK consumers by service providers, and how to preserve that value in next generation regulation (NGN environments).
- Careful consideration needs to be made of how there will be an effective basis for continued investment by service providers from now until we have an effective and flourishing NGN-enabled future.
- This will require agreed industry principles and ex-ante regulation, or competition will be decimated at the service level, with dire consequences for consumers.
- In particular, it is important that
 - (i) NGN access operators be required to provide voice interconnection and billing/collection services to service providers;
 - (ii) full interoperability be guaranteed.
- This is particularly important for Directory Enquiry services which fulfil a special social interest function in electronic communications markets² and which, since they do not form part of a bundle of principle communications services purchased by customers, are wholly reliant on the end user's selected operator for service delivery and service delivery conditions.

Assessing the regulatory approach in mobile
--

Mobile phones are the primary telecoms device for an increasing amount of consumers. It is crucial that Ofcom review their approach to regulation in this area accordingly.

Access, billing and pricing:

- Ofcom and the European Commission's focus has been too heavily on termination charges and has paid too little attention to enabling cost-based access for 3rd party services to stimulate innovation from service providers and to achieve lower pricing for consumers.
- Consumers compare standard pricing offers of MNOs and MVNOs in choosing their mobile services provider, but purchases of 3rd party services such as Directory Enquiries (whose services are used much less frequently) are not relevant when choosing their network. Consumers are highly unlikely to take such prices into consideration when they choose a network or to change networks on the basis of these prices.
- As in the case of mobile termination, a user's choice of mobile network confers on the chosen MNO monopoly power with regard to the conditions it imposes on third party service providers who wish to offer services to that customer.
- MNOs are able to impose onerous access terms on 3rd party service providers and their customers. This inflates retail prices and is a real impediment to setting coherent and clear prices. In some cases this is more than doubling the retail price of calls to Directory Enquiries

² As identified under the Universal Service Directive, art. 25.

- services versus the same calls made from landline networks that have wholesale billing products available.
- As part of Ofcom's review consideration should be addressed to how to avoid the inflationary effect this has on consumer pricing, and how 3rd party service providers can gain access to cost-orientated wholesale billing products on reasonable terms to offer better value products to consumers and to innovate further.
 - The Number would like to draw Ofcom's attention to the fact that a number of NRAs have considered it appropriate to look into regulation of mobile access for third party services given the evidence of abusive conditions, for example, Italy, Portugal, Finland and, most recently Austria (AT/2008/0811, case under Art. 5 AD).

Subscriber listings for Directory Enquiries

In order for DA services to meet the regulatory and social interest goal of providing access to comprehensive subscriber information, it is vital that databases include maximum information on mobile customers while respecting privacy concerns.

- Mobile subscriber listings are collected inadequately and unevenly by MNOs meaning that people who want to be listed in Directory Enquiries services find it very hard to do so.
- There are mechanisms which can permit a far greater level of mobile subscriber information inclusion while providing a high level of privacy protection.
- Ofcom should examine how to require the industry to collect mobile customer information for services such as Directory Enquiries services with suitable privacy protection.

<p>Digital Britain, NGA, preparing Ofcom's new strategic framework for 2010 onwards</p>
--

The Digital Britain report was a welcome policy document looking at critical areas for the future of communications in Britain. It has clearly set the tone for future discussion points, policies, and regulatory environments but there are clear gaps in what it has addressed so far, which Ofcom should take the lead on starting to address.

- All Next Generation regulation and policy-making needs to look at how the proposed solutions will affect competition in the telephony service layer, not just the broadband network layer. In order to mainstream this approach, a horizontal workstream should be established by Ofcom to this effect.
- Consideration will need to be given to how all Universal Service Obligations (USO) will be transposed into new systems where USO for access is held by multiple operator types.

<p>Considering potential new regulatory bottlenecks and areas of regulatory concern</p>
--

BT Directory Solutions' OSIS – the need for clarity

- There has been a long-running period of uncertainty relating to the future of BT Directory Solutions' OSIS database and the mechanisms by which down-stream licensees such as The Number gain access to subscriber listings from all network operators.
- Contrary to Ofcom concerns that prior regulations had been drafted wrongly and hence were illegal, a recent ruling by the CAT (Competition Appeal Tribunal) deemed that obligations imposed on BT to enable OSIS were lawful.
- Ofcom must take the lead in encouraging an industry settlement that provides certainty of data supply and cost-orientated access for the foreseeable future.
- It is not acceptable that the burden of resolving this issue continues to lie on repeated legal efforts and costs being borne by The Number over many years, to resolve what has only been a perceived regulatory flaw, adopted (and then put into question) by the regulator itself, and on which Ofcom has been given clear legal direction by the CAT.
- The industry needs certainty and Ofcom needs to provide leadership in achieving that.
- Consideration needs to be given to future-proofing any settlement by considering any obligations for BT and others to include subscriber listings from VoIP customers.

<p>Supporting the evolution of legal and economic frameworks for communications regulation</p>

Where market failings have been deemed to occur, or where regulatory rules have been breached there are mechanisms via Ofcom and the courts for Electronic Communications Providers to seek to have fair outcomes imposed on the telecoms industry. However, many of these mechanisms do not enable service providers to safely invest, nor to believe that they have fair redress on reasonable financial terms. Seeking regulatory challenges and changes can be long, cumbersome, expensive and with little chance of historical redress for any wrongs if they are found to have happened. There is little chance of achieving compensation for the intervening period, and the consequent harm done to the business that has been treated unfairly, nor a great expectation that legal costs will be paid by the offender.

- There is a regulatory imbalance which favours maintaining the status quo, over achieving fairness.
- Ex post regulation is the option of last, desperate resort for service providers and smaller telecoms players.
- Only through effective ex-ante regulation, and/or improved processes of redress (with relevant levels of financial penalties for losses incurred and anti-competitive harm done) can smaller operators and service providers gain a more suitable environment to merit the potential investment, innovation and service that they can offer to consumers.
- The Number would like Ofcom to take these views into consideration and to seek to use ex-ante regulation when potential harm to smaller services providers is likely / possible, and to review Ofcom complaints processes to examine the costs involved, and mechanisms that may be

available to award damages, or at least legal costs to make the system fairer.

3. What are your views on the elements which should be contained within Ofcom's new strategic framework?

- The current elements seem appropriate to continue with.
- Ofcom should consider adding a workstream relating to 'ensuring that a vibrant service provider community exists in Digital Britain and NGN environments'.
- Emphasis needs to be included in the detailed strategic framework to address how to manage complaints processes more quickly and fairly.