

Hutchison 3G UK Limited
Star House
20 Grenfell Road
Maidenhead SL6 1EH
United Kingdom

T +44(0)1628 765000
F +44(0)1628 765 001
www.three.co.uk



Alistair Bridge
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

13 October 2008

Dear Alistair,

Citizens, Communications and Convergence

Please find enclosed our comments on the above paper.

If you have any questions or would like to discuss our response please do not hesitate to contact me.

Yours sincerely,

Julie Minns
Head of Regulatory and Public Policy



CITIZENS, COMMUNICATIONS AND CONVERGENCE

Response from Hutchison 3G UK LTD (“H3G”)

Introduction

1. H3G was the UK’s first 3G network offering national coverage for calls and texts, and has over 90% population coverage for 3G services. As we consolidate our radio access network with T-Mobile we expect to reach almost universal UK population coverage for 3G by the end of 2009. H3G have over 3 million active customers in the UK and over 16 million worldwide in the Hutchison Whampoa group.
2. H3G were licensed by the UK government in 2000 specifically to stimulate competition in the mobile market. Ofcom will be aware that H3G has been at the forefront in developing innovative mobile products and services. We have embraced products such as Skype and IM seeing them as complimentary to our services rather than competing with them. We have brought value to the market, simplified pricing and led the market in delivering mobile broadband; in short H3G had delivered for both the citizen and consumer in equal and significant measure.
3. However H3G believes that the existing regulatory framework distorts competition and places H3G at a significant competitive disadvantage, which will limit H3G’s ability to continue to deliver innovation to UK citizens and value to the UK consumer
4. Therefore whilst H3G supports Ofcom’s framework, we question whether the application of this framework has been consistent.

Ofcom’s consumer policy

5. In the past twelve months Ofcom has proposed, introduced or consulted on a range of consumer policy issues. These range from market wide issues such as mobile mis-selling, through to complaint handling procedures and more recently the process for handling consumer credit refunds.
6. H3G acknowledges that some of these issues - mobile mis-selling in particular - required an industry wide approach (although we maintain that a self-regulatory approach, could have, and indeed has, delivered the outcomes Ofcom originally sought on mobile mis-selling). Nevertheless the diverse range of other issues, sometimes



driven by as few as one consumer complaint¹ is resulting in a piecemeal attempt to micro-manage outcomes for the consumer.

7. H3G believes that Ofcom should instead address the fundamental competition issues such as Mobile Termination Rates (MTR), Mobile Number Portability (MNP) and access to liberalised spectrum. Addressing these issues would create a level playing field where competition would work effectively to further the wider interests of citizens and consumers, and so enable Ofcom to fulfil its statutory duties without repeated regulatory intervention at the level of micro-management.
8. H3G agrees with Ofcom that innovation can be stifled by inappropriate regulatory intervention in some instances². For example the attempt to micro manage issues such as the provision of information on Mobile Broadband risks diverting resource away from delivering the service and instead focuses it on whether the mobile network has fulfilled its obligations under a proposed Code of Practice.
9. Equally resource may be required to develop specified services when the market has already provided a solution. For example mobile operators are required under General Condition 15, to provide access to the prescribed Relay Service. However, as the paper acknowledges *“the dynamic nature of the communications sector means that new services are being used in different ways and markets may address issues that required regulatory intervention in the past”*³. Arguably mainstream products, such as SMS and IM, deliver accessible solutions for deaf and hard of hearing consumers and do so in a way that offers choice and value rather than requiring them to use a single prescribed product. Indeed 2.22 of the paper acknowledges that mobile phones have been important tools in enabling deaf and hard of hearing citizens to participate in society by communicating with SMS. H3G therefore questions why, if Ofcom has applied its framework to the existing regulation, it is not proposing to amend the requirement to provide access to a Relay Service in GC15.

Furthering the interests of the consumer and the citizen

10. 5.1 and 5.2 of the paper argues that both the citizen and consumer interests are furthered by ensuring the market operates effectively. However H3G believes that the

¹ H3G has recently been required to provide information on the refund of consumer credits. We understand from Ofcom that the request arose as a result of a single complaint from one consumer.

² Section 4.5 “Citizens, Communications and Convergence”

³ Section 3.12, “Citizens, Communications and Convergence”



current MTR regime, the system for MNP and the proposed allocation of liberalised spectrum prevent the efficient operation of the mobile market.

11. On spectrum H3G believes Ofcom's current proposals will not result in the optimal use of spectrum and will not stimulate competition to the benefit of the consumer.
12. Similarly the system for MNP limits the ability of the consumer to exercise true choice and presents a significant barrier to new entrants who can only grow their customer base by winning customers from incumbent operators. Consequently the current regime for MNP restricts Ofcom's ability to fulfil its duties to the consumer and the citizen.
13. The regime for Mobile Termination Rates places new entrants at a significant disadvantage and prevents them from competing on equal terms with larger players. H3G does not believe that the MTR regime is consistent with Ofcom's duties to further the interests of the consumer and citizen.

Conclusion

14. H3G believes that whilst the framework is valid, in practice it is not being applied by Ofcom. Ofcom's approach to consumer policy is increasingly reactive rather than strategic with Ofcom appearing to no longer believe that the market can be relied upon to deliver for the consumer. At the same time a succession of consumer facing 'initiatives' is diverting resource away from developing new and innovative services to the benefit of the citizen.
15. H3G believes a more strategic approach to consumer regulation would give communications providers greater clarity and regulatory certainty, and enable them to make long term investment decisions to the benefit of both the consumer and the citizen.
16. H3G believes that Ofcom will only fulfil its agenda for the citizen⁴ if it successfully establishes effective competition in the mobile market. This can only be achieved through a reappraisal of the MTR regime, reform of MNP and a fair and transparent allocation of liberalised spectrum. H3G trusts that the application of the framework which requires Ofcom to promote competition and release spectrum, will enable Ofcom to fulfil its duty to further the interests of citizens and consumers.

⁴ Section 5.9 "Citizens, Communications and Convergence"