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Response to Ofcom's consultation on Consumer Policy submitted by the Mobile Broadband Group

The Mobile Broadband Group ("MBG", whose members are O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to respond to Ofcom's consultation on Consumer Policy.

We set out below answers, mostly brief and supportive, to the questions set within the consultation document.

First of all, though, we would like to make some general comments about the way some issues have been discussed in Ofcom's consultations. There is a tendency to treat the electronic communications industry as one – and make no distinction between the mobile and fixed sectors. It would be helpful if Ofcom could acknowledge the very real structural differences between mobile and fixed, this would avoid the tendency to assume that either:

- Issues that relate to fixed must be present in mobile; and
- Solutions which are relevant for fixed have a direct read across into mobile.

Mobile communications is a fiercely competitive market, driven by the availability of multiple infrastructures. The fixed market, to a large degree, revolves around price competition on the same basic infrastructure. The need for mobile operators to make long term returns on their significant investments means that brand (and industry) reputation are critical factors. Indeed the MBG is, in part, set up to ensure that "UK mobile plc" acts in a responsible manner on a broad range of non-competitive public policy issues – to the benefit of the market as a whole.

Secondly, despite Ofcom's generally good intentions, there is a tendency to assume that because a power to regulate exists, it must be utilised. For example at §3.18 in the consultation Ofcom says, "*effective competition policy is not enough to ensure that consumer interests are fully served.*" If this is case, why not apply sector regulation to the whole of UK plc? It may be true to say that effective competition policy *may not* be enough, but it is presumptive to assume that with effective competition there is *always* an additional requirement for further measures.

§3.18 then goes on to describe a number of things that *need* to be provided. The MBG believes that consumers only need additional protection beyond that afforded by national consumer protection measures, if two things are true:

- (a) There are indications of market failure or ineffective competition

- (b) there is clear evidence of consumer detriment : the cases highlighted in this document and Ofcom's interventions in the fixed market to date demonstrates that such evidence exists for the fixed market.

The fundamental principle is that competition and choice itself is what generally serves the consumer interest best. Otherwise there is always a danger that well-intentioned interventions have unintended consequences and may do more harm than good for consumers. This risk of 'regulatory failure' needs to be set against some idea of the underlying 'market failure' it is trying to correct.

The level of competition in mobile is such that the sector presents few consumer policy problems for Ofcom. In any event, the behaviour of the mobile operators and other participants in the mobile sector is governed by general law: Disability Discrimination Act, Distance Selling Regulations, Unfair Commercial Practices Directive and many others.

To capture these sentiments, at paragraph 3.29, a fifth bullet should be added:

That Ofcom's consumer policy should be guided by the principles of good regulation and should be integrated with and not duplicate existing protections already enshrined in general consumer law.

This would also be consistent with Ofcom's duty to withdraw from regulation where appropriate.

One further bullet point at 3.29 is appropriate. Ofcom's consumer policy should recognise more explicitly that consumers not only want to be adequately protected, they also want access to new products and services. Consumer protection measures should always be balanced against the ability of industry to invest, innovate and thus offer new services and benefits.

Question 1: Do you agree with the proposed distinction between citizen and consumer interests?

Yes. We also agree that it is useful to make the distinction between consumer and citizen and, although there is a very large overlap between the two constituencies, to have regard to each of them when deciding on policy.

As an example, in the mobile sector, we have created a Code of Practice for the self-regulation of new forms of visual content. The Code seeks to ensure that minors cannot access content that is only suitable for adults. In this context the minor is the direct consumer but his/her parent (and society in general) has an interest in making sure that content viewed by minors is appropriate.

Question 2: Do you agree with Ofcom's position on vulnerable consumers?

Yes. We agree that there could occasions when it is appropriate to target policy at particular groups, although Ofcom correctly identifies that those that may most need help are the hardest to reach (for example, the digital switchover strategy).

Overall, it seems from Ofcom's research that, for the vast majority, those that want to become more informed about and/or buy into new communications services are able to do so. In social grade DE 17% of households have only mobile provision in the household. All age groups other than 65+ live in a household with greater than 90% adoption. It may be worth considering, in future surveys, breaking down the 65+ range further. It is now too large a proportion of the demographic to treat as a homogenous group. 61% adoption of mobile by this group may mask a high adoption rate in the 65-75 range and a low uptake in the 75+, many of whom may be very immobile. Ofcom must also be careful not to harry older consumers into feeling that they should get involved with new media, when they may not want to.

Ofcom's consumer policy must complement its media literacy work, not duplicate it. In addition, in paragraph 3.24 and following Ofcom discusses the integration of consumer policy with competition policy. This is absolutely correct.

Ofcom should also acknowledge that its policies should integrate with (and not unnecessarily duplicate) general consumer policy. For example the requirements in GC15 to provide bills in alternative formats would be covered by CSPs' obligations under the DDA and is an example of unnecessary addition regulation.

Question 3: Do you agree with the proposed high level objectives for consumer policy?

Yes. However, we should like to understand how it is consistent for Ofcom to propose an extension of regulation in relation to Premium Rate Services, without first determining the principles of that regulation and whether consumers are adequately protected (either by commercial terms or other existing consumer protection laws); and to understand how this is consistent with Ofcom's objective four to ensure "*that regulatory obligations on suppliers provide an adequate level of consumer protection, without imposing an undue burden*"

This section of the consultation document also covers the Consumer Panel and the Government's proposals for **Consumer Voice**.

The MBG has responded to this consultation separately. In outline, we argue for the Consumer Panel to remain as it is.

It appears that the topics of major concern to the consumer bodies of the regulated sectors do not have that much in common. In an environment of dramatically rising fuel prices, Energywatch are focusing on fuel poverty and energy saving. Postwatch, whose market is dominated by the very recently liberalised Royal Mail, look at such matters as lost mail, rural post offices and delivery targets.

The Ofcom consumer panel's big issues are coming from digital switchover, broadband take-up and the issues that flow from the converging capabilities of broadcast TV, internet and mobile platforms and new technologies such as VOIP.

Ofcom's consumer panel has made a good start in developing a solid foundation of research on which to base its consumer policy and advice to Ofcom. The MBG would prefer to see it maintain this focus on the communications industry. At this time of unprecedented change, it is very important that Ofcom receives intelligent and

informed commentary from the panel. We believe that this will be achieved much more easily and efficiently if the Ofcom consumer panel is not subsumed into a larger body but retains its independence.

Question 4: Do you agree that the proposed indicators provide an appropriate basis for monitoring consumer interests? Are there any other indicators which should be used?

The proposed indicators seem to be appropriate, for the most part.

The MBG has two comments:

1. We would not like to see too much importance attached to consumers' awareness of technology terms, such as '3G' (A7.4). Most consumers are not interested in the underlying technology. They just want services to work. Ofcom surveys have shown relatively low awareness of the term 3G. This is not surprising, as operators have promoted the services (such as music downloads & TV streaming) not the bearer network. We would like Ofcom's indicators to focus on awareness about services rather than the underpinning nuts and bolts.
2. Table A2 refers to mobile pricing falling 9% for prepay and 4% for contract. The supporting table on page 84 of the consultation document describes 'Average UK mobile unit revenue indices' Please can Ofcom clarify whether this is meant to be a measure of pricing or average revenue per unit.

Question 5: Do you agree that Ofcom should publish an Annual Report on the Consumer Interest?

Yes, subject to this being done at a reasonable cost. The report must give due prominence as to how to Ofcom has balanced the interests of stakeholders and, in particular highlight the level of risk capital (investment) that has been deployed in seeking out new products and services for consumers.

Consumer Protection:

Question 6: Do you agree with the characteristics identified of effective consumer protection?

Yes, although Ofcom should add that the greatest protection of all derives from choice. Nothing provides greater incentives to a supplier than the knowledge that poor customer service will result in loss of custom.

On further small but nevertheless important point – on pages 30 & 31 (Figure 4) Ofcom notes that incoming SMS are one of the topics that generate traffic to the call centre. If evidence is being compiled about instances of consumer harm, it would be better to make a distinction between those that are reported as just a nuisance (such as unwanted marketing) and those that cause harm, such as financial loss.

Question 7: Do you agree with the assessment and priorities for rights and regulations?

Ofcom has identified its top three priorities as:

- 1) developing an early warning system and sharing more information about complaints with ICSTIS, Otelco etc;
- 2) Identifying the success factors for self and co-regulation, and
- 3) conducting a review of the consumer related General Conditions.

This is a reasonable set of priorities.

With respect to the review of the General Conditions, the MBG particularly welcomes Ofcom's intention of making the conditions as simple and flexible as possible. We suggest that these focus on what customers really value and avoids prescriptive approaches such as General Condition 15.

As Ofcom acknowledges, there is already a considerable amount of general consumer protection regulation, where the ASA, OFT, Trading Standards and others wield authority. The Unfair Commercial Practices Directive and Distance Selling Regulations complement these. Providers contribute to the cost of this through general taxation, in addition to the amounts paid for Ofcom, ICSTIS and ADR schemes (which now runs to millions of pounds for the mobile sector). We welcome regulation that is light touch and appropriately targeted at offenders and would urge Ofcom to include a fourth bullet under 4.61 to consider the protection afforded by general consumer law before determining whether specific regulation is required. We would urge Ofcom to undertake a gap analysis in relation to every new proposal to enhance consumer facing regulation. This approach would be extremely beneficial as Ofcom reviews the consumer related General Conditions.

Question 8: Do you agree with the assessment and priorities regarding consumers' awareness?

The steps that Ofcom have identified for making consumers more aware of emerging scams are appropriate.

The MOU agreed by communications providers to alert each other about rogue PRS activity has been very effective and is a good example of how the rapid dissemination of this type information is critical in the fight against rogue traders using communications networks.

Question 9: Do you agree with the assessment and priorities regarding complaints handling and redress?

With respect to Ofcom's proposal to implement its recommendations following the ADR review, the MBG is concerned that Ofcom has not taken into consideration the views raised in the (individual) responses. The effect of Ofcom's recommendations is to turn the ADR schemes into 'policemen' which is not their function. The ADR schemes are set up to handle disputes. Each Communications Provider has a contract with their ADR scheme provider which contains penalty clauses already. Communications Providers also have obligations under General Condition 14 which states that the complaint handling procedures and ADR schemes should be contained in a Communications Provider's Code of Practice which should be accessible on a company's website.

Ofcom also needs to ensure that enforcement processes do not distort competition by placing obligations on one company (in response to complaints) but not on its competitors, if the same risk of detriment exists.

Question 10: Do you agree with the assessment and priorities regarding monitoring and enforcement?

Following on from Q9. above, the MBG believes that the ADR schemes work well in practice and that issues would be addressed by the penalty clauses that exist in the contractual arrangements.

Consumer Empowerment:

Question 11: Do you agree with Ofcom's approach to the provision of consumer information?

Question 12: Do you agree with Ofcom's conclusion on consumer awareness of suppliers and services?

We agree with Ofcom's conclusions (for both Q11 & Q12) that it is better for the market to make consumer aware of alternative suppliers and new technologies and services. No specific direct action from Ofcom is required. Market players have every incentive to promote their services and the data shows generally fairly high levels of awareness. It is also not really appropriate to place too much emphasis on technology itself. Consumers are far more interested in the services that new technology delivers.

Question 13: Which of the options on comparative price information, if any, do you favour? Are there other options Ofcom should consider?

Of the options presented in the consultation, the MBG favours **Option 3** (Retain, review and re-launch the PASS scheme). There appear to be quite a few comparator web sites for mobile tariffs now and it is unnecessary for the regulator to participate in this 'market'. It is unclear whether the site providers think they really need the validation of the PASS scheme but the MBG feels that it would be worth trying to persuade them. Ofcom's research data suggests that there is reasonable demand (although not overwhelming) for more price comparison information.

Furthermore, we note that there are a number of channels in the mobile market, notably Carphone Warehouse and Phones 4U, that provide comparative information for consumers as part of their business proposition. For Ofcom to seek to interpose itself into this niche or replicate these competitive activities does not appear to be a useful way to utilise Ofcom's valuable resources. In particular, as the mobile device is an important element in the consumer sales transaction, a tariff comparator web-site may not deliver an equivalent experience to a visit to the High Street.

Question 14: What is your opinion about the ideas for generating awareness of price comparison information?

The proposals seem to be somewhat excessive. The most easily accessible price comparisons are on the web. A few seconds work with Google reveals a reasonable

selection. Ofcom could devote some space on its web site sign posting consumers to PASS registered comparison sites. For those that rely on paper based price comparisons, these are available from the independent retail chains.