



**The Mobile Broadband Group**

PO Box 34586, London SE15 5YA

16th June 2008

Mr Geoff Brighton  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Dear Geoff

**Consultation on changes to 0870**

The Mobile Broadband Group (MBG) welcomes the opportunity to respond to Ofcom's consultation on changes to 0870. We agree that Ofcom have taken the correct course of action to rethink the approach to 0870. The risk of the unintended consequences of regulation is ever present and this was a very direct example. In the light of the problems that emerged with alarms and other services, it was completely correct to abandon the proposals for pre-call announcements. The importance of conducting thorough impact assessments and consultation with all stakeholders before introducing new regulation is underscored by this experience.

The MBG's response focuses on one very detailed but nevertheless significant aspect of Ofcom's proposals.

Since the initial 0870 consultation, the Consumer Protection on Unfair Trading Regulations have come into force. These regulations set a clear benchmark for the amount of information that should be given to consumers prior to purchase, namely that it should be sufficient for the average consumer to make a rational economic decision. If the sector regulator is to introduce measures that place additional burdens on providers, there really has to be very strong evidence and an extremely good reason for doing so.

Ofcom is putting in place '*new strict and precise guidelines*' setting out how charges for 0870 call should be brought to the attention of the customer. The strict and precise guidelines, as set down in section 4.3 of the guidelines to General Condition 14, represent a very detailed intervention, which must be objectively justified on the

basis of evidence, particularly as there are already 'equal prominence' measures covering this area, introduced in August 2006.

General Condition 14.2 requires all Originating Providers who bill domestic and small business customers for calls to NTS to establish, maintain and comply with a Code of Practice for the provision of information relating to NTS calls. We appreciate that Ofcom committed to implementing a new regulatory framework for 0870 in 2006 and that this proposal is the culmination of that commitment. However, the NTS information requirements in GC 14.2 have, over the past two years, had a chance to bed down. Ofcom should therefore consider the effectiveness and consumer benefit brought about by the NTS Code requirements before seeking to amend the guidelines. Indeed, our understanding is that a review of the Codes of Practice is under way and so it would seem sensible to consider this aspect as part of the review and wait for the results before placing further requirements on operators.

It also seems irresponsible and disproportionate to mandate yet further measures, when, *prima facie*, the information in question would appear to be so peripheral to a rational purchase decision. The figures supplied by Ofcom in the consultation documents on number translation services indicate that less than 1% of total expenditure on telecommunications is spent dialling 0870 – an insignificant proportion of the total and a proportion that appears to be dropping, perhaps as service providers take up the option to provide access via an 03 number.

Furthermore, the proposed 0870 requirement should not be looked at in isolation but in the context of current mobile sales propositions, which are reasonably complex. Customers are choosing their providers on the basis of a wide range of factors such as price, handsets, brand, services, coverage, technology, data speeds etc. Moreover, Ofcom, in other initiatives, is showing an increasing interest in mandating 'equal prominence' type measures over such matters as contract length, early termination fees and computation of data speeds. The more items that are required to have prominence, the less prominent each individual item inevitably becomes and research by the NCC has shown that customers have a very limited appetite for all but the most important details<sup>1</sup>.

The MBG has serious reservations about attributing so much importance to 0870 and NTS numbers in advertising and promotional material.

The time that customers really need to know the pricing information is immediately prior to calling an 0870 number. All the mobile operators are completely transparent about what types of calls are included in call packages and their prices for calling 0870 number in printed and web-based price lists, on bills and through customer services. Indeed, we are concerned Ofcom's proposals may actually cause confusion between 0870 and other 087 numbers. In order to aid consumer understanding of the numbering plan, Ofcom acknowledged the need to simplify the structure of 08 numbers in the 2006 strategic numbering review. Notably, Ofcom cited its desire to move towards ascribing meaning to numbers at the two digit level (e.g. at 1.31 of the Ofcom Statement on Safeguarding the Future of Numbers). However, the amended GC 14.2 ascribes meaning at the three digit level.

MBG would also welcome clarity from Ofcom on the respective roles of Ofcom and the ASA in 0870 advertising. In the April 2006 statement introducing GC 14.2, Ofcom said that "*it is not its role to develop advertising guidance and believes this is best*

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<sup>1</sup> <http://www.berr.gov.uk/files/file44372.pdf>

*undertaken by organisations with specialist expertise in this area such as the ASA/CAP and the RACC (Radio Advertising Clearance Centre)*" (3.8). Ofcom does not explain why it now feels the ASA's existing guidance<sup>2</sup> needs to be incorporated into GC 14.2. The MBG takes it that, where no prices are advertised, the 0870 information is not required but would ask to Ofcom to be explicit on this point.

The 'equal prominence' requirements for NTS already make it cumbersome to promote services on the basis of price. This further requirement will make it even more so. The MBG cannot believe that the interests of competition and consumers are well served by Ofcom insisting that such marginal information is included in advertising and promotional material in such a prescribed manner. Ofcom has failed in its duty to demonstrate that the measure is proportionate or justified. The MBG urges Ofcom to reconsider the effectiveness of the existing GC14.2 on consumer behaviour and understanding before making further detailed interventions of this nature.

Yours sincerely,

*Hamish MacLeod*

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