



The Mobile Broadband Group

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Response to Consumer Focus's call for evidence in relation to its investigation into consumer priorities in the mobile phone sector.

1. The Mobile Broadband Group ('MBG', whose members are the UK mobile businesses of O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to respond to Consumer Focus's call for evidence about consumer priorities in the mobile phone sector.
2. We also welcome the opportunity to engage constructively with Consumer Focus on the range of topics raised in its paper.

Background

3. Mobile operators have every incentive, in a competitive environment, to be extremely sensitive to consumer priorities, as that is the only way in which long term sustainable businesses can be built. As Consumer Focus alludes to in its opening paragraph, over the last twenty years or so, the mobile market has delivered extremely well for consumers in terms of choice, innovation and a long term downward trend in pricing. The recently published Digital Britain Report has also acknowledged that the mobile industry has shown an extraordinary capacity for taking complex technology and making it simple, reliable and affordable.
4. With particular reference to customer service, good business sense motivates mobile operators to deliver good quality, efficient front line service in order to keep customer handling costs down and encourage customers to stay with them rather than churn to other networks.
5. The UK's mobile networks employ between 35,000 to 40,000 people directly. In addition, the independent retailers employ many thousands more. A very significant proportion of them deals directly with customers at the front line in call centres and retail shops.

6. No independent or comprehensive data exists for the number of calls received in a year from customers but it is in the order of 500 million. This is in addition to self administered inquiries that come into IVR, web and mobile portal based customer interfaces.
7. The context for this high level of interaction is that mobile services are increasingly comprehensive and integral to our day to day lives. Beyond basic voice and text, customers make widespread use of mobile e-mail, mobile commerce (i.e. buying things on the move), accessing banking services, entertainment and location based services. With the ¹arrival of the 'app store', customers are becoming even more reliant on a mobile device delivering instantaneous services and solutions.

Self-regulation and positive outcomes for consumers

8. The Mobile Broadband Group, representing mobile operators with about 95% of the market by number of customers, is tasked, among other matters, with handling areas where the industry can work together to deliver outcomes for customers.
9. In the last few years, working within the constraints of competition law, we have had a good track record of delivering positive outcomes in this regard. The MBG has published a self-regulatory code on content, which restricts the ability of minors to access age inappropriate content on the mobile device. In a recent Ofcom review, the Code was described as an effective example of self-regulation.
10. Secondly, working with the Home Office Task Force for child protection on the Internet and industry service providers, the MBG published a code on the safe use of passive location based services, to protect against the services being used to locate children without parental consent.
11. In 2007, in response to concerns being raised by Ofcom about 'cash back' deals, slamming and other mis-selling in the independent retail channel, the MBG published a code of practice for the responsible selling of mobile phones. This Code has demonstrably reduced the incidence of unfulfilled 'cash back' deals and slamming dramatically.
12. The MBG continues to engage with Ofcom about more general 'mis-selling, although this is a much harder area to tackle. In relation to the enormous volume of sales, it is very hard to identify from the relatively small volume of mis-selling complaints specific organisations or activities that could be addressed through some targeted intervention.
13. Finally, the MBG has very recently published good practice principles for the selling and promotion of mobile broadband, a very fast growing, yet reasonably complex and sophisticated offering. It is important that market growth in mobile broadband is based on customers having a good understanding of its capabilities and how to make the best use of these. The code includes measures to assist customers to understand speed and coverage issues.

¹ Application Store – offered by a mobile operator or third parties, where customers can purchase and download an enormous variety of value added applications for use on the mobile.

14. In addition to the MBG self-regulatory initiatives, the mobile operators participate in other areas of self-regulation, such as the Internet Watch Foundation (to combat child abuse on-line) and the Committee for Advertising Practice.
15. Mobile operators also engage with Government and regulators over a whole range of public policy issues, some of which Consumer Focus mentions in its call for evidence. A few that should be mentioned in this context are: The Ten Commitments for base station deployment, the Mobile Industry Crime Action Forum, working with police to tackle street crime, 999 roaming to improve access to emergency services in remote areas and 999 SMS to improve access to emergency services for deaf customers.
16. Taken together, the MBG feels these actions and investments in time and technology demonstrate that the UK's mobile operators work within an extremely complex public policy environment and that they take their responsibilities to customers and the wider community very seriously.

Innovation and investment

17. The technical backdrop is very complex too.
18. Since its inception, the mobile industry has existed in a state of constant evolution, if not revolution. The first analogue mobile networks were launched in 1985 in the UK. But even as the first services were being launched, standards development had already started on digital services. The first digital services were launched in 1992 (2G), and almost immediately development work started on 3G (first launched in the UK in 2003). Development work on 4G (LTE – long term evolution) is under way.
19. The competitive environment is made more complex, non-linear and uncertain by the strategic choices that mobile operators and other actors are making about, for example, the deployment of other wireless technologies (such as public Wi-fi), applications such as Voice over Internet Protocol (VOIP) and the provision of multiple service offerings (such as inclusive packages for some or all of pay TV, fixed Internet, fixed and mobile telephony).
20. At the retail end, customers are offered a very extensive range of handset devices and tariffs.
21. There is no doubt that this dynamism has delivered, allowing customers to work more efficiently, live more flexibly and receive increasingly sophisticated services at lower prices. But, at the same time, a state of constant evolution is a very challenging backdrop against which providers have to communicate change effectively and where customers have to constantly absorb and adapt to those changes. That is why the MBG and mobile operators individually welcome the opportunity to engage with Consumer Focus about the issues they have raised.
22. There are a few specific points that we believe Consumer Focus needs to consider in order to produce a balanced and comprehensive assessment of the mobile sector and the respective consumer priorities.

Position in relation to other industries

23. Consumer Focus identifies that Consumer Direct has recorded 100,000 complaints on the mobile sector over 2007 and 2008 (the data set covers mobile hardware as well as services) – in absolute terms high relative to other sectors.. However, the MBG feels that this is not a fair reflection of the actuality. The mobile industry has 70 million active, regular subscriptions – perhaps the highest of any industry. The volume of customer touch points with their service provider, in terms of billing, in retail outlets, web inquiries and calls into customer services must run over a billion transactions per annum. While it is not desirable to be high on the list of complained about industries, on a per capita or per transaction basis, it is possible the mobile industry is not performing as badly as raw data might suggest.
24. It is worth noting that the data set reported for mobile service contracts in 2008 had decreased by 9.8% compared with nine other industry sectors highlighted, all of which had increased their share of complaints.
25. When compared to the supply of domestic gas, for example, which is essentially a homogenous product being sold to the same customer base year after year, the challenge for mobile suppliers and for their customers is far greater.
26. Having said that MBG members take any number of complaints seriously and seek Consumer Focus' support in getting at more detail behind the headline numbers. Consumer Focus' influence in ensuring the delivery of more specific data from headline figures would be very welcome. This would not only be providing MBG members with a clearer indication of the precise issues to investigate and work to address, but also assist Consumer Focus to better identify the issues which it may want to prioritise for their review.
27. The MBG feels that it would be very helpful to arriving at a fair assessment to consider the sector in a wider context.

Results from Alternative Dispute Resolution (ADR)

28. One of the areas raised by Consumer Focus is ADR and complaints handling.
29. Notwithstanding that Ofcom are currently looking at this issue in detail , the MBG feels that Consumer Focus's understanding of the value of ADR to both consumers and communications providers could be greatly enhanced by examining the anonymised outcomes (anonymised for customer privacy reasons) of ADR cases. Such an examination would give an insight into both consumer behaviour and a detailed appreciation of the complexity of the disputes that can arise between providers and their customers.
30. The would not like Consumer Focus to get the impression that mobile operators hold out on customers because they feel they are in a stronger negotiating position and that customers have to go to ADR to get a fair outcome.
31. The MBG supports the ability to have a choice of ADR schemes. Healthy competition between the providers, with Ofcom underwriting quality through KPI monitoring, encourages efficiency. The fact that both current schemes have a good range of

customers demonstrates that communications providers are not just choosing the cheapest scheme.

Effectiveness of regulation

32. Consumer Focus has indicated that it may, in some cases, recommend additional regulation. If it is to do this, our preference is that self-regulation be considered first. As we observe above, the mobile industry has a good track record in this area. Formal regulation can suffer from being costly to implement (costs ultimately borne by consumers) and a lack of flexibility.
33. For example, the mobile operators have doubts about the relevance and efficacy of General Condition 14, which requires providers to prepare a basic code of practice for their domestic and small business customers which sets out where those customers can access certain specific information about the provider and his services.
34. The MBG completely agrees that a customer must be able to obtain the information about all the terms and conditions that relate to a contract subsisting between him/her and the supplier. It is unacceptable for charges to be hidden or for services to be marketed in a misleading and deceptive manner. We also agree that terms and conditions should always be set out in clear and intelligible language.
35. However, the mobile service today represents a fairly comprehensive product offering. The mobile operator therefore faces the constant challenge of presenting all the information that is relevant to a rational decision without confusing customers with too much detail. There is a diminishing return from the oversupply of information: the more information that is displayed 'prominently', the less prominent is each individual piece of information. The more information that is marginal to a customer's rational decision but that is required by regulation to be displayed prominently, the less likely customers are to read the key information.
36. Research conducted in 2007 by the Better Regulation Executive and the predecessor organisation, The National Consumer Council, *"found much regulated information was not reaching its target audience – because there was too much of it, because the font was tiny or the language impenetrable, or because it was provided at a time or place that didn't make it useful to consumers.*

The research found consumers didn't take in many common examples of regulated information, let alone act on them. As behavioural economics research has shown, people do not always follow expected "rational" behaviours.

Information itself may lessen consumers' ability to process and act on the messages they receive.....

37. The MBG urges that Consumer Focus review the issue of information requirements, including those for additional charges within the context of what is reasonable and

relevant to provide prominently and what information the customer is prepared to absorb at any one time.

Mobile services for deaf, hearing impaired, and sight impaired consumers

38. The MBG agrees with Consumer Focus that it is important that consumers with disabilities are able to benefit from advances in communications services. Indeed market developments in networks and devices are already doing this. This is evidenced by the migration away from Text Relay to other forms of communication such as SMS and e-mail (which is increasingly mobile too). The handset manufacturers are also delivering many features that are useful to consumers with hearing, sight and dexterity impairments. The MBG understands that the Mobile Manufacturers Forum is looking to improve access to information about relevant features through their mobileaccessibility web site.
39. We would also agree that it is timely to review the Text relay service. It should be noted that the UK is the only country in which a choice of provider is mandated, including mobile, as a result in changes to General Condition 15 arising from the last telecommunications package. However, the investment in Text relay made by the mobile operators has not been worthwhile. The service is used by literally a handful of users, with some operators not having any customers at all.
40. Achieving change in this area through regulatory intervention is very difficult because creating an end to end service requires device, network and application providers to work together when Ofcom only has power over the network element. It is time to recognise that, on the supply side, market innovation, in absolute terms, has been a much more powerful route than regulation for delivering benefits to disabled customers. In a fast moving market, though, maintaining equivalence relative to the whole market can be exceptionally challenging. Going forward there should be a shift away from the focus on equivalence and supply side intervention towards demand side measures, as happens, for example, with vehicles.
41. The Government, through its specialised vehicle fund, distributes grants via Motability to citizens with physical mobility problems. Motability was founded thirty years ago when household car ownership had gone beyond luxury status and around 60% of households had access to a car. Now that broadband access has reached a similar level and 'virtual' mobility is recognised as equally essential, perhaps similar approaches should now be considered.

Conclusion

42. Consumer Focus, on page 6 of its call for evidence, particularly invites stakeholders to assess whether there is any duplication of effort or gap in consumer advocacy. The MBG's general impression is that Ofcom (and its Communications Panel and agency PhonepayPlus) have considered and/or regulated on, often in considerable detail, most of the areas that Consumer Focus have raised in their document, very

much with the consumer's interest in mind. Other groups such as RNID and TAG also act as advocates for particular interest groups. The MBG would urge Consumer Focus not to duplicate work that is being or has been comprehensively reviewed by Ofcom or a Government department but to feed into these works streams, as they feel appropriate. For information, the MBG has provided in an Annex a table of most the recent reference documents.

43. The MBG looks forward to further discussions with Consumer Focus during the course of their review.

ANNEX

Table of regulatory investigation in relation to topics raised by Consumer Focus		
Additional charges		Ofcom Condoc published 28/2/08, statement published 19/12/08
Alternative Dispute Resolution and complaint handling		Ofcom Condoc published 10/7/08, statement 19/5/09, reducing time for ADR and proposing further consultation
Calls to special rate numbers		Ofcom Condoc 2/5/08, Statement - 23/4/09
Emergency roaming and international roaming		999 roaming - voluntary action by mobile operators, International - EU regulation
Growing contract lengths and bundling		Mobile Sector Assessment 28/8/08, Part II expected in summer 09
Handset repairs		
Involuntary exclusion from the mobile market		Ofcom Access and Inclusion consultation Spring 09
Lack of differentiation on billing		See Additional charges above
Misleading sales practices		Self-regulatory Code published July 2007, Ofcom General Condition 23 introduced 17/3/09
Mobile network coverage and 'not spots'		Mobile Sector Assessment 28/8/08, Part II expected in summer 09
Mobile Number Portability		Ofcom - Mobile Sector Assessment etc.
Mobile phone tariffs and billing		Ofcom approves Billmonitor mobile tariff comparison site 21/5/09
Mobile phone theft		Mobile Industry Crime Action Forum, MIND database
Mobile services for deaf, hearing impaired and sight impaired consumers		Ofcom General Condition 15. Mobile Manufacturers' mobileaccessibility.info web site Summer 09
Mobile Termination Rates		Ofcom/CAT Passim, Ofcom condoc 20/5/09
Premium rate services		DTI Review 2004, PhoneyPayPlus Review 2008, Ofcom scope review, May 2009

Quality of customer service in the mobiles market		Ofcom consultation published 11/5/09
Release of radio spectrum		Cave review 2002, Ofcom passim (13/2/09), Digital Britain Report 16 June 2009
SIM locking		SIM unlocking provided by market
Value for consumers: pay-as-you-go versus contract		Mobile Sector Assessment 28/8/08, Part II expected in summer 09