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DTI Consultation on Strengthening and Streamlining consumer representation and redress – A response from 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 the Government’s consultation: “Strengthen and Streamline Consumer Redress”

While sector specific regulation continues in the communications industry, the MBG suggests that it is appropriate that the Ofcom consumer panel remains outside the proposed ‘Consumer Voice’. Therefore of the options presented by the Government, Option 3 most closely matches our views, with the maintenance of the Ofcom consumer panel in its current form and the continuance of a choice of ombudsman schemes to ensure customer redress and satisfactory resolution of complaints.

The reasons for our views are as follows:

1. Structure

The main objective of the liberalisation of the telecommunications and utility markets has been to deliver investment, new services and falling prices. This has primarily been achieved through the introduction and promotion of competition. The ultimate success of regulatory policy will be achieved when sectoral regulation is disbanded altogether and market behaviour is governed through general competition and consumer protection law. The MBG has supported this long term aim and as a general principle would favour ‘horizontal’ regulation over ‘vertical’ sector specific regulation.

However, while sector specific regulation continues in the communications industry, the MBG has a clear preference for the Ofcom consumer panel to remain outside the proposed ‘Consumer Voice’ and thus maintain its existing special position within the ambit of Ofcom, as established by statute in the Communications Act only three years ago.

The MBG argues that the same arguments that have been put forward for CCWater to remain outside Consumer Voice also hold true for the Ofcom consumer panel. It has effectively only just been established and is just getting to grips with the very complex issues facing the broadcasting and telecommunications markets.

The membership of the panel is drawn from a wide group and brings experience and expertise from a diverse range of industries and backgrounds. The MBG is not persuaded by the Government’s argument that consumer bodies need to work under one roof in order to compare issues across industries. The Ofcom consumer panel is

demonstrating that this can be achieved effectively through diversity on the panel itself. We are also not persuaded by the argument that representation in the EU would be more effective coming from a single consumer body. It is just a question of sending a very slightly larger delegation to the EC, if that is required.

The MBG strongly supports what is described in the consultation document as the 'Electronic communications model' for Ombudsman schemes. As the Government correctly identifies it is the most effective way of controlling costs and for regulators to control standards.

2. Proportionality

The Government is not specific as to how the costs of Consumer Voice will be split between general taxation and a levy on industry participants. However, it is very apparent from the consultation document that the Ofcom consumer panel operates very cost effectively, with just four full time employees. They have adopted a strategic approach, which works well and does not duplicate the work that Ofcom does in pursuance of its statutory duty to promote the interests of citizens and consumers. Ofcom does a lot of work in this area and The Director of Consumer policy is in charge of a significant sized team. The size of the Consumer Panel is proportionate to the task at hand and the important role that they fulfil.

The MBG notes that it is intended to reduce the costs of Energy Watch and Postwatch by several million pounds. Nevertheless, in the absence of specific undertakings to the contrary, we fear that the mobile sector would be expected to bear some portion of the costs associated with the creation and operation of the single consumer body, which on a pure percentage basis would be much greater than the costs borne by the communications sector in the funding of the Ofcom consumer panel. The MBG cannot see how this would be justifiable. The mobile operators are already signed up to ombudsman schemes and already pay for the consumer work done by Ofcom and Ofcom's consumer panel through an annual levy. The sector achieves high levels of satisfaction with our overall service, recording 92% in Ofcom's recent survey¹, slightly ahead of Internet (90%) and landline (88%). Mobile operators employ thousands of front-line customer care staff and offer a high level of support. They have developed constructive relationships with Trading Standards and more recently Consumer Direct. The market is dynamic and competitive, with a relatively high level of consumers churning to other networks (or threatening to churn) in pursuit of ever improving services, devices and prices. Our situation is markedly different to that of the liberalised utilities.

3. Remit

It is true that some consumers can now buy their utilities and telecommunications services from a single supplier, although whether this will be a continuing trend is not clear. The MBG agrees with the proposal that consumers should have access to an ombudsman scheme for these types of services. It makes sense that ombudsman schemes should be capable of being approved by each of the relevant regulators, so that a supplier operating across multiple markets can join a single ombudsman scheme to provide an effective dispute resolution facility. But this can be achieved

¹ Ofcom's Consumer Policy, Annex 5, Table A5.12

without placing all the consumer bodies of the regulated industries in one organisation.

On the policy side, 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 main challenges do not arise from companies that can offer multiple services such as utilities and telephony. The big issues are coming, as it were, from the other direction and new technological developments: 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. We feel that it is not appropriate for a generalist consumer body to have to take on the complexities of the European framework for communications and the very fast pace of change in the sector. This is much better done by a body that is focused on the sector (which itself is already very broad)

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.

In the medium term, we believe that there will come a time when mobile communications becomes de-regulated. In principle, as barriers to entry are removed through spectrum trading and liberalisation, and economic regulation is rolled back when we believe that the mobile communications sector could exit sector specific regulation by Ofcom. At that time only, and not before, it could be appropriate to subsume consumer representation related to our sector into a broader body, paid for out of general taxation, that covers the majority of UK plc that is governed by competition and general consumer policy alone.