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Response of the Mobile Broadband Group to Ofcom's review of "How will Ofcom consult?"

The Mobile Broadband Group ("MBG"), whose members are O2, Orange, T-Mobile, Vodafone and 3, welcomes the opportunity to respond to Ofcom's review of "How will Ofcom consult?"

In general, the MBG very much supports Ofcom's approach to carrying out consultations prior to taking any significant policy decisions. While we have not always agreed with the outcomes, the process of consultation has generally been transparent, informed and thorough. The MBG has just a few comments of detail, concerning Ofcom's 'seven principles'.

Pre-consultation

The MBG supports Ofcom's practice of holding informal talks with stakeholders prior to the publication of a consultation to ensure that policy development is heading in the right direction. Such meetings help to deliver a consultation that is comprehensive in scope and based on reliable information. Members consider that this is important prior to major consultations, such as the digital dividend review.

Ofcom also attempts to provide a reasonably transparent time-tabling for consultations, through the annual plan and other channels of communication. This is important, because multiple consultations running concurrently put a heavy strain on the resources of respondents. It is important that Ofcom maintains a determination to schedule consultations in a reasonable manner and thus enable respondents to make a high quality response. However, the number of consultations is such at present the resources of the MBG members have become strained. Given the extent of regulation of mobile operators, the MBG would ask Ofcom to give further consideration to this area to ensure response dates for consultations are sufficiently staggered and take account of holiday periods. For example mobile operators envisage consultations around the 3G expansion band, the digital dividend and the amendment of mobile number portability conditions occurring at the same time. This is stretching the resources of all.

During the consultation

When the consultation principles were first published, the most radical proposal was the reduction of the standard consultation period from thirteen weeks to ten weeks.

By and large, this shortened period has proved acceptable. Without carrying out a comprehensive survey, it seems that Ofcom have exercised suitable discretion in extending this period to thirteen weeks for particularly heavy consultations. Consultations such as the mobile termination review have been particularly resource intensive for mobile operators and the extra time has been completely necessary.

Ofcom has also been prepared to take meetings during a consultation period. This is an important part of the process and should continue.

However there have been instances where Ofcom has consulted only for the minimum four weeks on the basis that the issue needed to be dealt with urgently. One example of this was in the consultations amending the PRS condition, where, despite justifying a shortened consultation period on the grounds of urgency, Ofcom took over six months between closing the first consultation and opening the second.

Post consultation

The post consultation phase is possibly the function that is presently carried out least satisfactorily.

In general, consultation responses are submitted on the due date and then nothing is heard again about the subject at hand, unless actively chased up, until a statement appears at some unspecified time in the future. For example, on VOIP, a decision was promised for August 2006 but it is now December and the statement is still not published.

Despite offering the possibility of an Ofcom/stakeholder 'follow- up' meeting once a consultation has closed and responses have been submitted, the MBG is unaware of any instances where a general Ofcom/stakeholder 'post consultation' follow-up meeting has taken place.

In principle 7, Ofcom states that it will “keep a table on our website of all current consultations, those recently closed etc...”. The MBG would very much encourage Ofcom to indicate on this table a target date for a statement, and, if appropriate, a revised target date. It is very difficult for stakeholders to keep track of where any particular decision is in the pipeline. With this additional information, stakeholders can be kept informed of the progress of important decisions.

The MBG are pleased that all non-confidential responses are published reasonably promptly.

By and large, Ofcom have kept to their commitment (in principle 7) to “*give an account of how the views of those concerned have helped shape ...decisions*”. This feedback is very important and Ofcom should seek to maintain (and wherever possible improve) this standard of commentary on consultations and decisions.

On occasion, there has been the appearance a token consultation, where the comments made by stakeholders seem to have had very little effect on the outcome. An example is the policy around 03 and 08. The decision to approve the ICSTIS Code was also taken with a number of issues raised by stakeholders still unaddressed.

There have also been instances where Ofcom has raised the same or similar issue in virtually simultaneous consultations. In this converged regulatory environment, we appreciate that many issues are interlinked but we nevertheless feel that greater efforts could be made to deal with discrete issues within one consultation rather than have them fragmented across several. Sometimes Ofcom have also dealt with consultation responses by publishing a further consultation. This makes it difficult for stakeholders to comment on Ofcom's analysis, as the principal focus is the response to the new consultation. For the purposes of transparency and accountability it would be preferable for Ofcom to separate its response to a consultation from a further consultation.

Role of the consultation champion

MBG is unclear as to the role of the consultation champion. It would be helpful to have much more transparency about the activities of the consultation champion. We are unaware of the number of complaints received and what the outcome was in each case.

On the one occasion where the MBG raised a complaint (around the short timeframe for one of the PRS consultations) the response given was a brief explanation, which appeared to be passed on from the relevant Ofcom team and finished: "Of course if MBG has any issues about our process, you should make these in response to the consultation and we will consider these in coming to our conclusions."

I think we expected a slightly more robust process. In future, we would welcome a more independent examination of the issue at hand and a clarification of the criteria against which the consultation champion considers complaints.

International representation

We believe Ofcom should provide transparency in its process of consulting with stakeholders when representing the UK on international issues, in particular spectrum.

One practical point

The MBG would like to raise one practical point. Some consultations are very lengthy and it is much appreciated when Ofcom make a printed version available rather than having to download it from the Internet. Ofcom standard glossy format is fine for market research publications and the like but it is not good for a consultation document, which has to be worked on at great length and used repeatedly. They do not lie flat on the desk and after a while the pages take leave of the glue on the spine. It would be more robust and useful for consultation documents to be printed on lighter paper and wire bound.

Conclusion

In summary, the MBG would like Ofcom to maintain its existing procedures for transparent and well-researched consultation and make improvements in the areas we have suggested here. As a principle, it is better to err on the side of more consultation rather than less and on the whole, Ofcom gets this about right.