

Strategic Review of Digital Communications (discussion document)

Response from Citizens Advice to Ofcom

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Introduction

Telecommunications markets have transformed over the last 30 years as mobile phones have evolved from a niche luxury item to an essential service and the internet has become an increasingly integral component of so many aspects of modern life. Ninety five per cent of all UK households now have a mobile phone, rising to ninety nine per cent amongst young adults. More than four in five households (83 per cent) have access to the internet at home.¹ In this context it is vital that these markets are competitive and meeting the needs of the consumers they exist to serve. We therefore welcome Ofcom's decision to carry out this timely and comprehensive review of telecommunications markets.

There are indications that these markets are working well - we have seen great leaps forward in technology and innovation while prices continue to fall. However, through our experience of helping consumers to resolve their issues, we know that these broadly positive macro trends mask a number of features which are detrimental to individual consumers and competition. Over the last year the Citizens Advice Consumer Helpline has helped consumers with more than 21,000 enquiries about mobile phone hardware and service agreements, 6,500 enquiries about fixed line telephone services and 4,400 enquiries about internet service providers.

In the first quarter of 2015/16 mobile phone service agreements was the third most common issue reported to the Consumer Helpline, after second hand cars and energy. Mobile phone hardware was the fifth most common issue. Clearly the volume of issues we see partly reflects the size of different markets and the volume of purchasing decisions made. Even so, these are not envious comparators given the well known consumer problems in the second hand car and energy markets.

These interactions give us unique and real time insight into the problems consumers encounter in telecommunications markets on a daily basis. We welcome the opportunity to feed these insights into Ofcom's strategic review of digital communications. In this response we do not attempt to address every issue Ofcom raises in the discussion document. Instead, we focus in on four key areas which align most closely with our expertise and concerns as a consumer champion:

1. Barriers to consumer engagement and decision making
2. Standards of service and contract exit
3. A 'one stop shop' for consumer advice
4. Competition and supply side issues

¹ Ofcom (2015) *The Consumer Experience of 2014*

1. Barriers to consumer engagement and decision making

As Ofcom acknowledges in the discussion document, the majority of the regulator's recent efforts to encourage consumers to engage in the digital communications markets have been focussed on ensuring that consumers can *access* the information they need to make a decision and removing barriers to *acting* on that information, for example by switching. These factors are undoubtedly important, but information is of limited practical value if it is not given at the right time or presented in a way which allows people to compare deals across the market and decide which provider and deal best meet their needs. This is particularly important in the digital communications markets as the decisions people are expected to make can be complex and - due to the inclusion of minimum contract terms which often exceed 12 months - long term.

In addition, there are a wide range of consumer markets competing for the limited amount of time and energy people are willing and able to expend making consumer decisions - approximately 28 minutes per day according to one estimate.² Research commissioned by Citizens Advice found strong evidence that people have a hierarchy of priorities when it comes to allocating this time to different consumer tasks, and that people tend to prioritise spending time shopping around in leisure markets, perceived as an enjoyable activity, rather than regulated markets.³

During this research we asked a representative sample of the population to select from a list of regulated and unregulated markets which markets would be most and least worth shopping around in. This revealed that mobile phone and broadband markets feature relatively low down in consumers' conscious hierarchy of priorities, even when compared with other regulated markets - only 5 per cent selected the mobile phone market as the market it would be *most* worth shopping around in, compared to 7 per cent for broadband, 14 per cent for mains gas and 30 per cent for car insurance.⁴ Five per cent selected the mobile phone market as *least* worth spending time shopping around in. Four per cent selected the broadband market.

These findings demonstrates the scale of the challenge Ofcom faces in encouraging and enabling people to engage effectively in communications markets. We are concerned that some aspects of the way in which products are structured and promoted in these markets act as a barrier to consumers making effective comparisons and finding the best deal for them:

² European Commission Staff Working Paper (2011): *Consumer Empowerment in the EU* (SEC [2011] 469 final), Brussels: European Commission

³ Citizens Advice (2014) [Consumers' hierarchy of priorities](#)

⁴ *ibid.*

- Although innovation and technological advances have brought clear and significant benefits to consumers, there is a risk that **communications markets are becoming increasingly difficult to navigate**. For example, in the mobile phone market, as well as selecting a handset and supplier, consumers must choose from a wide range of tariffs varying in price, contract length and the extent of inclusive minutes, text messages and data. There is little reliable data on the total number of tariffs available, but a recent analysis of bills of more than 28,000 people found that there were more than 7 million options available.⁵ This can make it hard to compare offers across the market, with evidence suggesting that many mobile phone users are paying more than they need to.

With innovation also feeding through into more advanced handsets, and from there into longer contracts, it is also becoming increasingly important that consumers understand the different elements of their bill. Most, though not all, networks combine the cost of the handset with the cost of the ongoing service charge. This makes it difficult to establish how much is being paid for different elements of the bill and whether a consumer is truly getting the best deal.

This practice can also make it difficult for consumers who wish to exit their contracts early - our clients often find themselves negotiating to exit a contract and struggling because, with few exceptions, mobile networks do not separate out the elements of the bill which relate to repayments for a handset from those which relate to ongoing service provision.

Complexity does not always mean confusion and innovation has clearly brought benefits to consumers. However, it is important that Ofcom takes the opportunity presented by this strategic review to take a careful, detailed look at the real life consumer experience of communications markets today and ensure that it has processes in place to identify and tackle emerging problems as these markets continue to evolve.

- **The way in which products are advertised** is also important. Often adverts are the first interaction a consumer has with the switching process and it is vital that they are clear and not misleading to consumers. Over the last year on a number of occasions Citizens Advice has raised concerns with the Advertising Standards Authority and Ofcom regarding the standard of advertising in the broadband market. The headline rate advertised by many companies bears little resemblance to the actual cost consumers can expect to pay once line rental and other unavoidable fees and charges are taken into account.

⁵ Analysis released by Carphone Warehouse quoted in bill Monitor (2012) The Billmonitor.com National Mobile Report 2012

We recently published new analysis which compared the headline monthly rate advertised on the websites of all of the major broadband providers with the average amount a consumer would actually pay each month across the course of the contract.⁶ We found that on average people could expect to pay more than three times the headline price advertised, with some paying up to six and a half times more.⁷ This practice is fundamentally misleading and makes it very difficult for consumers to make comparisons across the market with confidence and ease.

- As Ofcom highlights in the discussion document, **bundled products** make the process of establishing whether packages offer value for money and meet the needs of the individual consumer more complex. These products can also make it difficult to compare deals across the market, particularly in cases where the services are advertised as one monthly headline rate, rather than splitting out the costs of each individual element.

Consumers can also run into difficulties when they wish to cancel one of the services included in the bundle, perhaps as a result of a poor standard of service. They often find that they are unable to do so without navigating complex cancellation processes and paying prohibitively high cancellation fees. The way in which these products are advertised gives rise to further concern - consumers can be enticed in by attractive headline features which relate to one aspect of the bundle, such as the speed of the broadband or additional television channels at a reduced price, while overlooking other aspects of the bundle which may not be as attractive. Furthermore the rise of bundled packages could disadvantage those who only buy selected communications services. In particular, mobile only households, which disproportionately contain younger and DE consumers, may not be able to access the best deals because they are not buying other products.

With the arrival of 'quad play' products in the market - which offer consumers the opportunity to buy their fixed line telephone, mobile phone, broadband and pay tv services in one bundle - there is a risk that bundles will become even more complex and difficult to compare. More broadly, the regulator should also consider whether an increase in the popularity of bundling may create barriers to entry for new providers if they can only realistically compete within the market if they are able to offer all four services.

Bundled products often offer clear benefits to consumers in terms of lower prices and the convenience of dealing with one contract with one supplier. However, it is vital that Ofcom is vigilant in monitoring this aspect of the

⁶ To calculate the price a consumer would pay we took the approach of an informed but non-expert consumer, drawing the information from the broadband providers' promotions. We chose the simplest broadband option available and calculated what this cost, first under the headline price advertised and, second, once fees from the small print were included. We then compared the two prices.

⁷ Citizens Advice press release (22nd July 2015) [Broadband providers 'cashing in on false promises](#)

market to make sure that bundled products are advertised appropriately, clearly structured and consumers are not prevented from comparing deals across the market. The regulator should also require that the standard of service a customer can expect to receive, and the redress they are entitled to should these standards not be met, are clearly and prominently set out in the terms and conditions of the contract.

We believe that Ofcom's strategic review of digital communications should include a full appraisal of the impact of these elements of communications markets on individual consumers and competition more broadly.

2. Standards of service and contract exit

The consumer journey doesn't end when a consumer takes out a contract. It is equally important that they have clear rights in relation to the standards of service they can expect from their provider, and clear cancellation rights and routes to redress when these standards are not met. Unfortunately this is not always the case.

Earlier this year we carried out an in-depth analysis of 500 of the 21,500 calls we receive to the Consumer Helpline each year in relation to mobile phones. Almost one in five (17 per cent) of these cases related to issues of poor standards of service and inflexible contract terms. These issues are deeply connected, for example, a consumer might find that the service they are receiving is persistently and severely below the standard they expect, and then find that an inflexible contract makes it hard to leave the provider concerned. In these cases, consumers can be left paying for a service they are not receiving for months and sometimes even years. Although the cause of consumer discontent varies in these cases, one of the most common complaints is of poor voice or data coverage, with people receiving no signal or intermittent and unreliable signal at home or at work.

While the cases we see are at the sharp end, we know that poor service is not uncommon - research by Ofcom found that 14 per cent of mobile phone customers are fairly or very dissatisfied with the reliability of their mobile phone service.⁸ The crux of this issue, however, is often not the service itself but ill-defined or unreasonably weak minimum standards. This makes it hard to obtain compensation or negotiate a contract exit. Most networks do not define a reasonable minimum level of service or conditions for penalty-free contract exit in their standard pay monthly terms and conditions. Indeed, most take the opposite approach, setting out a range of factors from network improvement works to adverse weather conditions, that can legitimately affect service.

⁸ Ofcom (2015) [The Consumer Experience of 2014](#)

The practical consequence of this is that we see clients hit with large contract exit fees even when their service has failed. Ofcom caps the maximum fee that can be charged for early contract exit at the customer's total remaining monthly payments and as contract length has increased in recent years these fees have risen accordingly. The median contract length is now 24 months and market data suggest the most common monthly tariff is around £17.50 a month. A consumer wanting to exit a 24 month contract after 3 months of poor service could be required to pay up to £267. For the 8 per cent of people paying £40 a month or more, contract fees in this situation could be up to £840.

Coverage maps are a useful tool for consumers when deciding which network from which to buy their phone contract but they are not a suitable alternative to clear consumer rights. In the majority of cases coverage maps give consumers an accurate sense of whether there is adequate coverage in the locations where consistent coverage is most important to them.

However, these maps do not offer full protection against poor signal. As the Communications Consumer Panel stated in 2009:

*"Coverage can be affected by a variety of factors, including local topography, the position of buildings, and even weather conditions. It is difficult to build models that can accurately take into account all of these factors. This means that the areas of poor coverage are not always reflected in the data."*⁹

These issues can be exacerbated by the fact that the geographical areas in which consumers place the greatest importance on receiving signal, such as their home or office, are likely to be relatively small. As a result, a consumer who lives in area which is technically 'covered' on the map can still find themselves without reception for substantial periods of time.

Checking maps can also only help avoid problems if the service issue existed before the consumer bought the contract - changes in the network infrastructure or in the local environment (i.e. new buildings) that occur post-purchase can still lead to substantial service problems. Coverage maps are also unable to help consumers to predict problems with their service which are not caused by a lack of coverage, such as being supplied with a defective sim card or handset and other technical failures of the network.

In summary, although coverage maps are a useful tool, there will always be some consumers who are at risk of entering into contracts which do not offer them an acceptable standard of service. It is vital, therefore, that companies are required to clearly set out in the terms and conditions of the contract the level of service a

⁹ Communications Consumer Panel (2009) [Response to Ofcom's Mobile Sector Assessment 2 Consultation](#)

consumer can expect to receive, along with the level and type of redress they will be entitled to if these standards are not met.

3. Independent Advisory Body - a one stop shop for advice

In the discussion document, Ofcom asks respondents whether there is a case for introducing a 'one stop shop' for telecommunications information and advice for consumers. Citizens Advice already delivers this function, through the Citizens Advice Consumer Helpline and our network of local Citizens Advice. We therefore believe that such a service would be an unnecessary duplication of an existing publicly funded service which is working well.

Citizens Advice has operated the Consumer Helpline since April 2012. Covering England, Scotland and Wales, the service currently receives in excess of 1 million contacts a year from consumers with range of consumer issues, a proportion of which involve disputes with telecommunications businesses. Data captured over the past year shows we've received over 31,022 telecommunications complaints. Mobile phone hardware and contracts both appear in our top ten issues.

The Citizens Advice consumer service advises clients on general consumer law and industry-specific rules and rights, as well as more detailed case work in the energy and post sectors. The aim is to give our clients the knowledge to resolve issues with traders and companies themselves, therefore reducing the likelihood of similar issues arising in the future.

We have well-established and comprehensive referral arrangements with over 200 referral partners, including Trading Standards and the Energy Ombudsman. This allows us to refer consumer cases to the appropriate partner at the right point in their journey, thus increasing efficiency and preserving the consumer experience. In addition, we have recently been able to enhance the advice we give on Alternative Dispute Resolution (ADR) and have developed improved mechanisms for referring consumers to providers of these services.

Consequently we have extensive experience of assisting people with complex problems, especially with regards to navigating complaint procedures. Through our operation of the Consumer Helpline we have seen the extent to which people value having a single place to go for advice when they are having a problem with traders and service providers. Our most recent survey of consumers who had used the service found that 93% would use the helpline again if they needed to. Nearly half (46 per cent) of callers told us things got better after they contacted us - 49% of these clients felt that they would have been unable to resolve their problems without the help of the service.

Given our existing services and high levels of consumer trust, combined with our experience of helping consumers to resolve their problems, we feel we already provide a multi channel 'one- stop- shop service for consumers and small businesses. We would be happy to discuss with the regulator ways in which we can further enhance this service in relation to telecommunications issues, but we do not believe that there is a case for the creation of a new consumer advisory body.

4. Competition and supply side issues

So far, our response has been focussed on the consumer experience of communications markets. In this section we raise a number of issues which Ofcom may wish to consider on the supply side of the debate:

- **Partial not spots** - locations where users of one (or several) network(s) can get a signal but those of one (or several) other networks can't - can be infuriating for affected consumers. This is a particular problem for rural and/or remote communities.

Alongside ensuring that people have clear cancellation rights in the event of receiving unacceptably poor standards of service, Ofcom should develop access rules that allow for shared infrastructure to alleviate this problem. The current alternative presented in the discussion document appears to us to be inefficient. The regulator may wish to consider whether the model currently in use in the energy sector - which allows multiple suppliers to compete over shared single networks - would be more effective.

- **How regional or demographic protections interact with interchangeable products.** The consultation highlights that BT is considering retiring parts of the copper network due to the significant costs associated with maintaining outdated technology. The document also highlights the existence of interchangeable products, such as cable broadband, competing with the copper network in many areas. In areas where these alternatives exist, the impact of removing the copper network on consumers is likely to be limited. However, in the areas where the availability of alternative networks is more patchy, typically in rural areas, the impact on consumers could be severe. Ofcom must ensure that plans are put in place to mitigate the impact on consumers who do not have access to alternative networks before relaxing BT's obligation to maintain the copper network.
- **Cross sectoral service regulation.** As markets increasingly incorporate the Internet of Things ("IoT"), boundaries of sectoral regulation will be tested. For example, a consumer may have a smart fridge in their kitchen that can respond to demand control signals. If they come home from work and find it

has switched itself off, it may be difficult to know who to turn to because it could be a fault with the product, with the communications network, or with the energy supplier - all of whom are separately regulated. Ensuring there is a joined up redress regime will be increasingly important.

- **Rates of return.** The discussion document suggests that BT is consistently being remunerated materially above its cost of capital for its regulated services. This is concerning and suggests that consumers could be getting better value for money. As we set out in our recent report, [Many Happy Returns](#), which considers the consumer impact of price controls in regulated networks - this is not an issue unique to telecommunications markets. Ofcom has a duty to investigate this further and ensure that consumers are not paying more than they absolutely need to for these services.
- **Regulatory reporting and its interaction with vertical integration.** The consultation document also contains a discussion around whether the current financial reporting arrangements allows for full regulatory understanding of what the actual costs are, where they lie, and the potential for it to hide cross subsidies or potential gaming.

We have no reason to believe that this abuse currently exists in telecommunications markets, but would highlight that similar concerns have come to form part of a debate about transparency and pricing in the energy market. These elements of the market were not considered to be cause for concern in the energy market in the early years of liberalisation as prices were falling, but came to dominate the debate once that trend reversed. Prices continue to fall in the telecommunications markets, and there is little short term indication that this trend is changing. However, it would be prudent for the regulator to try and resolve any concerns regarding transparency now to avoid a repeat of the catastrophic loss of trust seen in the energy market.