

Communications Consumer Panel Response to Ofcom's second consultation on assessment of future mobile competition and proposals for the award of 800 MHz and 2.6 GHz spectrum and related issues

The Communications Consumer Panel welcomes the opportunity to respond to Ofcom's second consultation on assessment of future mobile competition and proposals for the award of 800 MHz and 2.6 GHz spectrum and related issues, which offers the prospect of significant benefits to consumers and small businesses.

We would make the following general points:

- Reliable mobile coverage is of vital importance to consumers, citizens and businesses resident in the UK. Both voice and data coverage are essential for economic growth. Additionally, 14% of UK adults had mobile broadband via a dongle in October - December 2011, and 5% of households had it as their only means of internet access¹;
- the Panel believes that this is a once-in-a generation opportunity, which should be used to make an intervention with the purpose of significantly increasing mobile coverage beyond the current 2G footprint;
- we would like to see the £150m Mobile Improvement Programme(MIP)'sweated' to maximum effect - such an opportunity will not come around again and we would encourage the wise investment of this fund in a way that also inspires greater industry investment so that consumers are better served; and
- it is impossible to make an informed decision between the two approaches proposed for the obligation specification without knowing what coverage improvement will be achieved by the £150m MIP programme.

In response to specific questions:

Question 4.1: Do you agree with our assessment of the competition concerns relating to national wholesale competition that could arise if the auction took place with no measures to promote competition? Please state your reasons for your views.

The Panel's concern centres on the impact on consumers, and effective competition is essential in respect of coverage, service levels, price and choice. The Panel agrees that fewer than four credible national wholesalers would have an adverse effect on the competitive market and therefore on consumers too. The Panel is broadly content with Ofcom's assessment of the competitive concerns.

Question 4.2: Do you agree that option 4 should be adopted to promote national wholesale competition? Please state the reasons for your views.

The Panel appreciates the difficulties and uncertainties that make the promotion of wholesale competition a challenge. On balance the Panel agrees with Ofcom's proposal 4, which most closely aligns with the overall objective and which reduces the risk of the market working less well for consumers.

In relation to both Q4.1 and Q4.2, the Panel notes that the possibility of spectrum-hoarding is also a potentially anti-competitive issue, and thus detrimental to consumers and to the UK economy. As Stephen Temple noted in the Panel's first consultation response: "There are pockets of spectrum across many frequency bands in remote rural areas that are unused and likely to remain so. A mobile operator is unlikely to respond positively to the idea of their spectrum being used in these pockets by somebody else as there is always a fear that it might block off something the mobile operator might

¹ <http://stakeholders.ofcom.org.uk/market-data-research/statistics/>

want to do in the future and the economic rent for that spectrum in rural areas is too low to overcome this reluctance.” The Panel would therefore suggest that conditions should be applied to ensure that there should be a time-limit for holding spectrum without using it in the service of consumers.

In its response to the original consultation, the Panel suggested that there was an alternative to the standard “use it or sell it” option. We pointed to the housing market and the way long-standing empty properties are addressed: here a local authority can impose a tenant on the owner of an empty property without removing the property rights of that owner. Thus a better approach might be to begin with the same “use it or...” trigger but the sanction is for Ofcom to find a rent paying sub-tenant for that idle spectrum.

Question 5.1: Do you have any comments on the proposal to include a coverage obligation in at least one of the 800 MHz licences, and the proposed extent of such a coverage obligation?

Coverage improvements remain essential both to satisfy the needs of consumers and citizens and to promote economic growth in more rural and semi urban areas - areas also in need of economic stimulus. By definition, these areas are likely to be the least economically-attractive areas of the country to operators, and least likely to be improved if we were to rely solely on the market.

This spectrum auction represents an opportunity to improve coverage that is unlikely to be repeated for at least a decade. During this period, the possibility of supporting economic growth will be increasingly dependent on high-quality and consistent mobile coverage for voice and data. It is essential that this opportunity is not wasted.

The Panel believes that there must be a coverage obligation. We welcome the fact that the originally-stated target of 95% coverage of the whole of the UK has now been extended to provide indoor coverage to 98% of the UK population, but we regard this as a somewhat imprecise measure, as it does not take into account the fact that this will potentially result in skewed figures for coverage across the individual Nations and Regions. We believe that much more work needs to be done to establish what coverage will be achieved in each of the Nations if 98% of the UK is covered. If we make a comparison with 2G coverage today, we see that while the figure for the UK as a whole is 96%, this translates into 87% in Northern Ireland, 85% in Scotland and 84% in Wales.

We are not aware of any evidence-base that shows how 98% UK coverage will translate to coverage in the devolved Nations. We have heard estimates varying from 90% to 95%, and a comment that 98% UK coverage ‘should result in good coverage in the Nations’. But estimates do not provide adequate reassurance that the coverage will meet the legitimate aspirations of citizens, consumers and small businesses in the Nations. The gap in resource availability in these areas is already acute and likely to widen unless remedial measures are adopted.

We are encouraged by the £150m MIP announced by the Chancellor in September 2011 and on the progress being made on turning this into improved coverage (both indoor and outdoor). However it is not yet clear how far this sum will go towards improving coverage in rural areas and in the Nations. Much depends on the method adopted for the allocation of the £150m across the Nations, but it seems unlikely that a disproportionate amount of the funds will be targeted towards the Nations - which is what is required if coverage is to be brought up to a reasonably equitable figure across all the Nations.

We note that the operator with the coverage obligation is likely to ensure that the areas covered are the most economical for the operator - hence coverage in the nations and in rural areas in England is likely to be much lower. This strengthens the case for sub caps, at least at the level of Scotland, Northern Ireland and Wales.

We believe it is essential that there should be a realistic target for each Nation. Whilst achieving 98% in each Nation may present real challenges, there should nevertheless be targets for each of the Nations. We believe that coverage following the combined results of the MIP and the obligations under the spectrum auction, should be calibrated to result in a minimum coverage of 95% indoor coverage for each of the Nations.

Question 5.2: Do you have any comments on which of the two approaches proposed for the

specification of such an obligation would be preferable: Approach A, which would require the licensee to provide a 4G mobile data service to an area within which at least 98% of the UK population lives; or Approach B, which would require the licensee to provide the specified mobile data service with coverage comparable to the combined mobile voice coverage of today's 2G networks and in addition to provide the same service with coverage comparable to that of the additional mobile voice coverage achieved through the MIP, in those areas where MIP infrastructure is capable of supporting a 4G mobile data service?

In principle we favour approach B because the MIP investment will be targeted to those areas which, after consultation with local and devolved administrations, are considered the most important. Option A allows the operator to choose where to cover to achieve 98%, which is likely to be in those areas that are most economical for the operator.

The technical options for the MIP programme are such that most operators are likely to provide coverage in the MIP areas, which would provide service for customers of those networks in these areas.

However, it is not yet known how much extra coverage is likely to be achieved for £150m via the MIP. If it were to be equivalent to 98%, we would definitely favour approach B because of the ability to target the improvements. But if current 2G coverage plus the extra from the £150m MIP programme fell well short of 98% indoor coverage then this would not meet consumers' needs. **It is impossible to decide between the two approaches without knowing what coverage improvement will be achieved by the £150m MIP programme.**

Question 5.3: Do you have any comments on our assessment that it is unlikely to be proportionate to impose such a coverage obligation on more than one licensee?

As noted in our previous response, imposing a coverage obligation on only one of the licences means that in geographically difficult areas, only one operator would potentially be available and also assumes that consumers do not travel into and out of these areas. If this approach is to work at all, then it must be accompanied by the enablement of roaming throughout all such areas - which would lessen the number of new base stations needed, with consumers having additional protection against unfair termination charges.

We remain concerned about the coverage for mobile users who are not on the network which has the coverage obligation and who need to travel into coverage obligation areas if their network has not installed coverage. We remain sceptical about whether competition will force all operators to match the coverage of the operator with the licence obligation.

Small businesses in particular are increasingly dependent on mobile voice and data coverage if they are to thrive and generate economic growth. Having only a single network available for businesses operating over a potentially large area is completely inadequate if business is to be effective in rural areas. **The Panel believes that a general roaming obligation in these areas of poor coverage is essential.**

We remain concerned that there is no certainty that other operators will choose to match the coverage of the one with the obligation and therefore consumers on other networks will not see any improvement when they travel into 'obligation areas'.

The mobile operators have stressed technical, commercial and legal difficulties with roaming, but the Panel is not convinced that these difficulties are insuperable or as onerous as presented. While the enabling of emergency roaming may have been an easier proposition than more general roaming, it was introduced with comparatively little difficulty. General roaming has existed for a considerable period and works well for visitors to the UK and UK consumers who have bought an overseas registered SIM card.

The MIP solution is likely to provide coverage from all, or most operators in the areas covered by the £150m MIP programme. However it remains to be seen if the MIP can deliver 98% indoor coverage for £150M.

Question 5.4: Do you have any views on the costs and benefits of a wholesale access obligation on the licensee with the coverage obligation in respect to those areas beyond existing 2G mobile voice coverage?

In the absence of a more comprehensive coverage obligation, this could help improve coverage and customer choice.