Communications Consumer Panel and ACOD response to Ofcom's consultation on its mobile call termination market review 2015-18

Introduction

The Communications Consumer Panel and ACOD welcome the opportunity to comment on Ofcom's consultation on its mobile call termination market review 2015-18.

The Panel works to protect and promote people's interests in the communications sector. We are an independent body, established by the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, Government, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses. The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which face many of the same problems as individual consumers. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively.

Following the alignment of the Advisory Committee for Older and Disabled People with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Context

When a consumer calls a mobile phone user on a different network - either from a mobile or a landline - the network operator they are calling charges a 'termination rate' to the provider with whom they are placing the call. This wholesale charge is part of the cost of delivering calls that providers consider when they set retail prices for consumers.

Ofcom concluded its last review of the market for mobile termination rates in 2011, imposing a control on the rates charged by the four largest network operators. Since then, industry rates have fallen by around 80%, from around 4 pence per minute (ppm) to around 0.8 ppm. A decade ago, termination rates were 14 ppm.

As the consultation notes, the mobile market has changed significantly since Ofcom concluded its last review of the market for mobile termination rates in 2011. The amount of spectrum available to provide mobile services has increased dramatically, following the release of 4G spectrum. While 4G networks are currently used for high-speed mobile broadband, operators are expected in the near future to start using them for voice calls. We also note that consumers increasingly use mobile networks for data connectivity; that as 4G take-up grows, mobile communications providers are likely to deliver less traffic over 2G and 3G overall; and that the mix of voice and data delivered over existing technologies is also likely to change. The design and deployment of mobile networks is increasingly more efficient with lower costs, which has been supported by new network sharing arrangements.

Response

The Panel believes that communications services play an increasingly fundamental role in the everyday lives of consumers, citizens and micro-businesses. As the consultation notes, consumers value mobile services, in particular, because they allow them to make calls (and be contacted) in many different locations, including while on the move. For micro-businesses particularly, mobile is a fundamental business tool to keep in touch with their customers and any colleagues.

The Panel has welcomed that mobile termination rates have fallen significantly in recent years, following intervention by Ofcom and therefore strongly supports the overall proposal that this trend should continue in coming years and specifically that the proposed new charge control, applying to all operators, would mean termination rates would fall to less than half a penny per minute by April 2017 in real terms. We believe that mobile termination rates should be as close as possible to the cost to the terminating operator and that savings to the originating network should be passed onto the consumer.

When considering the definition of the market, while many consumers may be becoming more reliant on non-voice communication eg SMS, IM and email, in their day-to-day lives, we agree that there remain fundamental differences in the nature of voice communication relative to these alternatives and that they should not be considered as sufficiently close substitutes for voice calls to a mobile number.

We also agree that calls to fixed lines are not, in general, a close enough substitute for calls to mobiles to be included in the same market, particularly as calls to mobiles offer a much greater chance of immediate contact, especially if the call is not planned between the caller and recipient. This is particularly important for micro-business users. There are additional benefits as outlined, such as mobile handsets being more of an individual possession than a fixed line handset and therefore offering greater privacy regarding call records or voicemail services. For some calls, including those made by users in particularly vulnerable circumstances, this may be valued by the caller. The use of calls to, and messages left on, mobile numbers has allowed the NHS to become much more interactive with citizen users in a way that was not possible for privacy reasons with fixed/shared phones. Neither do we consider that the use of OTT applications is a close substitute for calls to a mobile number for the time being.

The research conducted for the consultation helpfully sheds light on the question of how callers might react to an increase in the price of calls to a specific mobile network number. As highlighted in the consultation, in order to take action, consumers would need to be aware: that they are calling a mobile number; the specific network/call provider that controls the number; and the price they would face when calling that particular network/mobile number. However consumers cannot know which network will terminate their call due to mobile number portability. They might be aware of which network originally issued the number group, but that is not the same as which network now terminates. The research shows that the majority of respondents felt they had good awareness of whether they were calling a mobile or landline but consumers' awareness of which mobile network they were calling was more limited - 69% answered that they rarely or never knew which mobile network they were calling. Moreover, the research suggested that the majority of consumers have a limited knowledge of the actual price of calling a particular number - the majority (54% of all respondents) had only a rough idea or vague idea and 35% of all respondents had no idea. We therefore have no reason to disagree with the statement that substitution at the retail level is unlikely to constrain increases in mobile termination rates as consumers are unlikely to be aware of any impact that an increase in mobile termination rates might have at the retail level, even if retail price rises were significant, i.e. of the order of 5-10%.

If smaller mobile communications providers were to charge mobile termination rates higher than their efficiently incurred costs, then we agree that a situation of asymmetric mobile termination rates is more likely to arise. We note the examples given when, in a number of cases in the recent past, smaller mobile communications providers have charged higher mobile termination rates than the four largest mobile communications providers and originating communications providers have typically responded by (i) excluding calls which incur higher mobile termination rates from call bundles and (ii) charging consumers higher retail prices. Consumer detriment is then likely through either increased costs or lower usage.

We note that the existing cap on the basis of Long Run Incremental Cost (LRIC) has resulted in a sharp reduction in mobile termination rates - which have fallen by around 80% over a three year glide-path – and a consequent decrease in mobile communications providers' revenues. Based on current volume trends, Ofcom estimates this to account for a very small proportion of mobile communications providers' total revenues (for example, it amounts to less than 1% of UK mobile retail telephony revenues in 2013).

Although the proportion of vulnerable consumers[1] who are on post-pay contracts has increased significantly between 2011 and 2013, over 50% of vulnerable consumers are still on pre-pay contracts, compared to 35% in the general UK population. Additionally, 27% of consumers in DE households and 30% of consumers with an income under £11.5K are in mobile-only households, compared to 16% of UK households generally. As stated, these consumers tend to be net receivers of mobile termination rate payments especially those who are 'low users' and as the revenue (and profit margin) from mobile termination rate payments is lower under LRIC, mobile communications providers may in theory increase retail prices to compensate for this revenue loss. This risk is obviously of significant concern to us – particularly in relation to the statement that "This means that for fixed and mobile customers, the overall effect of LRIC Mobile termination rates on retail prices may be ambiguous – it is possible that the lower retail price for fixed line services may be counterbalanced by certain higher mobile prices, perhaps particularly for low use pre-pay customers. However, fixed-only customers will unambiguously gain."

We are somewhat reassured that Ofcom consider that vulnerable customers are unlikely to be significantly affected under LRIC Mobile termination rates, relative to LRIC+ given that the move from LRIC+ to LRIC since 2011 did not appear to produce any significant increase in the pre-pay prices of a large number of mobile communications providers (with some mobile communications providers maintaining or even reducing their per-unit prices). We would anticipate the potential reduction in contribution for each consumer caused by lower mobile termination rates, partially offset by lower termination costs associated with outgoing calls to be very marginal. Outgoing prices should also continue to be tempered by competition. However we would urge that careful consideration of this element is maintained.

In relation to fixed line consumers, if mobile termination rates do fall, we would certainly expect this to be reflected in lower prices for fixed to mobile out of bundle calls and bundles including fixed to mobile calls, or fixed tariffs more generally where these include the option to make fixed to mobile calls, to ensure that fixed only low users also benefit.

In summary, we agree that a single, lower cap on mobile termination rates is likely to be of benefit to consumers. Unsurprisingly, the research has shown that consumers are unaware of, and are likely to be largely indifferent to, the type of network their calls terminate on and the technology used. As the consultation notes, with a single cap, the end user is more likely to face the same charge for what is, from their perspective, the same service.

[1] As defined in the consultation, consumers under £11.5k income and consumers in the DE segment