

Consumer Panel response on NTS consultation

1. This is the formal response of the Consumer Panel to the Ofcom consultative document on “Number Translation Services – Options for the future”.
2. Our response can be summarised as follows: we advise that Ofcom should reconsider its proposed regulatory approach to this issue because:
 - The evidence base relating to issues of consumer concern is not focussed hard enough on what appear to be issues of consumer concern and should be re-thought;
 - Propositions about consumer disruption are advanced in the consultation paper, but without supporting evidence about how far, in practice, they would have an impact on consumers sufficient to outweigh benefits;
 - The analysis of the 5 regulatory options Ofcom considers in its consultation paper give insufficient weight to issues of consumer concern;
 - The proposed remedies to enable consumers to exercise informed choice in this marketplace are inadequate.

The evidence base

3. We find the description of the issues arising for consumers in this market place to be comprehensive. We also find that the statements in the consultative document detailing the concerns of consumers reflect fairly the consumer research that is reported in the Annex to the document. The Plain English version of the document is a reasonably accessible version of what are admittedly complex arguments (although we wonder why the “consumers” of the consultative document become “customers” in the Plain English version). In particular, the summary of the Plain English version gives a clear account of what consumers perceive as the problems with NTS numbers in practice. We emphasise this latter point because it has prominence in the Plain English document – but, as we will argue below, we do not consider that Ofcom has in fact given sufficient weight to these issues in determining which regulatory option it favours at this stage.
4. There seem to us to be two big problems for consumers with the widespread use of NTS numbers: one is that the costs of using these numbers is not widely understood: and the second is that the underlying business model, which is that companies making use of these numbers are providing “value-added services” for their customers, is one that is not widely accepted by consumers. There is a subset of this latter issue, which is that companies using these numbers are in fact perceived by some consumers as abusing them for revenue-generating purposes.

5. Both of these views emerge strongly from the research that Ofcom has carried out and which is reported in the consultative paper.
6. On the first point, the widespread lack of price awareness, Ofcom's comments, summarised at para 3.8 seem to us be correct, and telling. We are not persuaded however that the strong statement that "Ofcom has particular concern about the low levels of awareness amongst consumers about what they can expect to pay for calls to 084 and 087 numbers" is carried through into its analysis of options.
7. On the second point, that consumers are sceptical about the value actually added by use of these numbers, we note that:
 - At para 3.13 the document sets out a strongly held concern about the use of so-called value-added numbers where the consumer has little or no choice. However, para 3.15 notes that: "it is extremely difficult to gauge the scale of this problem with any precision". This is a statement of the obvious. It is plain both from the Ofcom research and from a number of consumer comments to Ofcom following the publication of this document that this is an area of major concern and deep irritation to many people. Ofcom has a sophisticated research apparatus at its disposal and we would expect it to use this to get more and better insight into the strength of consumer views and concerns on this issue, rather than falling back on a weak statement of how difficult it is to gauge the scale of the problem. If Ofcom's current research does not enable it to answer its own question, then we suggest that Ofcom rethinks its research.
 - This point has force because, as we argue later in this note, we believe that the Ofcom approach to the selection of a preferred regulatory option is flawed because it fails fully to recognise the nature of consumer concerns on this issue. It may be, of course, that further research would reveal that the strongly-expressed views that we have seen (and which we understand have featured in some of the responses to Ofcom's consultation) are not in fact typical of consumers generally. But, as it stands, the case is not proven: and we recommend that Ofcom should take further steps to get a clearer fix on this issue.
 - A second area of deep irritation for consumers is the cost of "hanging on the line" to a call centre using an NTS number. Para 3.19 states that "stakeholders" have told Ofcom that "long call waiting times represent poor customer service and that most businesses have a sound commercial incentive to keep waiting times to a minimum". Ofcom's apparent acceptance of this proposition from unnamed stakeholders seems to us to be naïve. The point that so irritates consumers is that they frequently have little or no choice about using these numbers. The "sound commercial incentive" referred to in the rather lofty view attributed to "stakeholders" only applies in a truly competitive situation.
 - A third point which relates to the need for more/better research to improve the evidence base on this issue relates to the use of NTS numbers for pay-as-you-go internet access. The consultation makes it clear at 1.11 that Ofcom believes that it would not be in the

interest of consumers to make changes to the NTS regime which reduced the ability of ISPs to use these numbers to support dial-up internet access. As the paper notes, ISPs might migrate to other numbers – which would be disruptive – or exit the industry. All of this is of course true: but what we would expect to see is some attempt, again through research, to produce some evidence about where consumers would like this balance to be struck.

- Also relevant to the issue of disruption is the question of how NTS numbers are currently used by small businesses and how any proposed changes to the NTS regime would have an impact on these businesses (whose interests are also part of the remit of the Consumer Panel). The impact, both positive and negative, of changes to the NTS regime on these businesses does not appear to be factored into the regulatory judgements set out in this consultation paper. We would expect to see explicit consideration of these issues – although we note the explicit reference to the impact on not-for-profit organisations at 4.40 and 4.41.
8. Our general comment on this section of the Ofcom consultative paper is, therefore, that we do not think that Ofcom has, as yet, assembled the evidence base necessary to enable it to determine the most appropriate regulatory option.

The analysis of the regulatory options

9. Turning to the individual policy options, our general comment is that the analysis of the policy options set out in section 5 seems to us to give insufficient weight to the problems of price confusion and lack of choice referred to above, and to be excessively focussed on industry, rather than consumer, issues. The analysis of the range of options seems to turn, in the end, on ways in which the interconnect and pricing regime can be made to function in a way that promotes supply side competition and increases revenue certainty for operators. This is of course an important outcome of whatever regime is determined: but competition will not work to the benefit of consumers unless there is a well-functioning price mechanism and the ability for consumers NOT to use certain suppliers who are not providing value for money. We do not feel that these issues of how to make this market deliver for consumers have been addressed with the same rigour as those which relate to operators: the recommended option is analysed in terms of its effect on operators, with consumer protection measures bolted on afterwards.
10. We consider that Ofcom's analysis of the future of the NTS regime should *begin from* an analysis of consumer concerns and consider options from the standpoint of how these might best be met – and then consider all the many industry issues that would flow from each approach.
11. This is how the Panel has approached its consideration of this issue. Given the nature of consumer concerns arising from Ofcom's research and as we understand it, responses to this consultation, we would give much more weight to the arguments for the radical options 4 (no regulated revenue share on 0845/087) and 5 (no regulated revenue

share on any NTS number ranges). We recognise of course that it is not possible to predict with certainty the working out of the market change that would flow from the abolition of regulated revenue share on 084 and 087. However, we think that the potential benefits in terms of greater certainty and clarity for consumers deserve a great deal of weight. We also consider that the possible new ways of providing genuine value added services should be explored more rigorously. We also consider that the comparison of the benefits with those flowing from Option 2 are understated as we believe that the possible price effects of Option 2 are overstated. See para 5.49.

12. This is where the need for a stronger evidence base on the effects of disruption both to households and to small businesses becomes very apparent. It is of course the case that we do not know how the industry would respond to such changes, and how far the market would change as a result. But it seems to us in principle, that these more radical options stand a better chance of meeting concerns about lack of clarity for consumers in the widespread current use of NTS numbers. This is where we feel the evidence base is at present insufficient: the evidence that has been assembled does not fully relate to the regulatory balance that would have to be struck if either of these options was pursued.
13. In discussion with Ofcom executives, it has been put to us that the currently preferred option, Option 2, could be adopted as an interim measure. We find this unappealing, but would be interested to know what measures of performance Ofcom would use to test the effectiveness of Option 2 if it took this course.

Consumer remedies

14. As Ofcom recognises in its consultative document, any of the options it pursues will need to be buttressed with measures to increase consumer understanding of the price of NTS calls; and with measures to curb the inappropriate use of such numbers. We find the discussion on these consumer protection measures disappointingly weak.

Specifically:

- ASA guidance on pricing: could this really be achieved in a way that has a chance of impact on consumer awareness? Or would it become just more small print? How would Ofcom monitor the effectiveness of this measure?
- COI guidance: we recognise that the use by Government departments of 084 and 087 numbers is not a matter for Ofcom. But we do think that some harsh words from Ofcom about the misuse of such numbers in what are essentially monopoly situations would be appropriate. We note Ofcom's repeated references to light touch regulation and suggest that it should be more prepared to use its "eyebrows". Again, we would like to know how Ofcom or indeed the COI would monitor the effectiveness of such codes of practice.
- OCPs providing better pricing information: we are attracted to the idea of call costs being pre-announced. This seems a very direct and targeted way of improving consumer information and

we would urge Ofcom to pursue this. It seems to us to be entirely consistent with Ofcom's regulatory philosophy that consumers should be empowered in this very direct way with access to information on pricing. We await with interest the industry response on the feasibility of this proposal.

- Bringing revenue sharing services under ICSTIS regulation: with all due respect to ICSTIS, this seems to us to be a second order issue. The point is surely to have tough consumer protection policies first, and then decide who implements them. Bringing regulation under the wing of ICSTIS does not, of itself, seem to contribute anything to consumer protection.

Conclusion

15. Our understanding is that there is no external pressure driving Ofcom to conclude its review of NTS by a particular date. There is therefore time for Ofcom to take careful stock of this consultation and to consider the issues noted above: the strength of the evidence base; the rigour with which the consumer interest has been analysed; the way in which the consumer interest has driven – or not – the regulatory balance that is being proposed.

16. The Panel's advice to Ofcom is, for all of these reasons, to reconsider its proposed approach to the NTS regime.

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