

# **STRATEGIC REVIEW OF TELECOMMUNICATIONS - PHASE 1 CONSULTATION DOCUMENT SUBMISSION FROM OFCOM CONSUMER PANEL**

## **Summary**

- The Consumer Panel believes that consumers benefit from well-functioning, competitive markets with many players offering a range of choice.
- But the information available to consumers in this complex and fast-changing market is often confusing or patchy. This is a situation that is deeply unsatisfactory for consumers and one that in the end will be damaging for the industry's relationship with its customers.
- One clear output that we want to see from this review is a strong set of proposals, ideally from the industry, for making life simpler for consumers through provision of better, clearer, information.
- In addition, Ofcom must make every effort to understand the needs of all consumers, particularly those whom the market may not serve well, in order to promote choice.
- The output of the Consumer Panel's forthcoming Research Project will be an important resource for the next stage of the Telecoms Review.

## **Background**

1. The Consumer Panel has been established to advise on the consumer interest in the markets regulated by Ofcom - a requirement of Section 16(2) of the Communications Act 2003. The Panel is independent of Ofcom and sets its own agenda. It has a responsibility to understand consumer issues and concerns related to the communications sector (other than those related to content of advertising and programming) and to help to inform Ofcom's decision-making by raising specific issues relevant to the consumer interest.
2. The Panel will be selective and strategic in its involvement with Ofcom and will not respond to all Ofcom consultations. The Panel has made the Strategic Review of Telecommunications one of its priorities for its first year of operation and, in addition to formal written submissions, the Panel will continue to have an on-going dialogue with Ofcom as the Review progresses.
3. This response is an appraisal of the approach adopted by Ofcom – a kind of ‘audit’ of the questions Ofcom has asked so far and a look to the questions it will need to ask in the future if it is to truly understand the market from a consumer perspective. It is not an attempt at providing answers, as the wide-ranging research that the Panel will be commissioning over the course of the summer will help to better understand the current concerns and experience of consumers. Results are expected later this year and will be fed into the Review process as they emerge. The Panel’s research will be a year on year study of the consumer experience and will provide both a benchmark and an opportunity to gauge progress.

## **Introduction**

4. Affordable access to telecommunications services is essential for social and economic inclusion and provides a lifeline to vulnerable consumers. We will be looking to ensure that Ofcom satisfies itself that telecommunications markets work fairly for consumers; that it reviews

regularly the consumer impact of its regulatory intervention; and, where necessary, maintains or introduces regulatory safeguards to protect consumer interests. To do this Ofcom must be aware of and fully understand the changing nature of consumer needs both now and for the future.

5. We therefore welcome Ofcom's Strategic Review of Telecommunications. It is too easy, in a rapidly changing market, for the regulator to focus on the day to day issues that require rapid remedy, to lose sight of strategic aims and the longer term vision. It is especially important for a newly created body like Ofcom, to commit time and resources to developing a view of the future whilst also regulating for today's needs. In this way it can design a regulatory approach that is appropriate, fit for purpose and robust enough to allow the benefits from the innovation the market delivers to reach everyone in society.
6. It is also worth recalling that historically commentators have heralded such wide-ranging reviews and significant technological change as a prelude to a reduction in regulation. The Consumer Panel is sceptical about such comments in relation to this review. Whilst it is fair to say that the nature of Ofcom's regulation may need to change to address new circumstances, the role of regulation cannot diminish until there is common agreement that markets are functioning effectively and deliver for all groups of consumers and, although this is technically outside our remit, for citizens.

### **Consumer Tests**

7. A number of familiar consumer tests should inform Ofcom's thinking as it conducts the Strategic Review of Telecommunications. Adequate consideration of all of these consumer principles will need to be take place if Ofcom is to ensure that telecommunications consumers get, and continue to get, a good deal in terms of price, quality and value for money. In the context of the review, these principles are:
  - a. Access  
Consumers across the UK require easy and affordable access to networks providing a full range of services. This includes access to broadband services with appropriate functionality for individual

consumers and small businesses. Ofcom needs to be clear about the current 'picture' and, equally important, the likely trend of future developments.

b. Choice

Ofcom should consider comprehensively the way consumers can effectively exercise choice and whether anything prevents them from engaging with the market and applying their spending power. This includes choice in equipment and not just services

c. Information

Clear, trusted and appropriate information can help, for example, reduce barriers to switching. If the market is not providing adequate, transparent information – allowing comparisons to be made across the full range of services on price and quality - there is a role for the regulator to ensure that it does.

d. Fairness

Ofcom must be ready to address market failures which result in different groups of consumers - including those with disabilities, those in rural areas and small businesses – being unfairly discriminated against e.g. inconsistent access to a similar range of services on similar terms.

e. Redress

Any well functioning market must contain redress mechanisms fit for purpose and readily accessible to all. This begins with complaint handling by the service providers themselves, individually and collectively but must also include some second stage element if this first stage fails. Redress processes will need to adapt with changes in the market.

### **Observations on the Review**

8. The Consumer Panel starts from a position that consumers are best served by well-functioning, competitive markets facilitated by a regulatory environment that is swift to identify market failure and prompt in acting to ensure the introduction of appropriate remedies. It recognises that the tension between promoting an environment conducive to technological change and innovation whilst furthering the interests of consumers must not be unduly skewed by an overly cautious approach to risk on behalf of

the regulator. Ofcom must use the information delivered by this review to develop strong and reliable processes to alert it to market failure – including a continuous assessment of where and how failure may occur – especially where information about impact may not naturally emerge until it is too late to remedy.

9. With this in mind, the Panel recognises that Ofcom has to resolve fundamental questions about its regulatory approach - the continued relevance of RPI-X models or the encouragement of investment in the local loop, for example. Timing is also critical - the effects of BT's announcement on reduced prices for local loop unbundling will start to be seen in the autumn just as the Strategic Review is considering long-term policy options and these effects must be taken into account, although assessing their impact at that early stage will be problematic.
10. These 'big picture' initiatives will be fundamental to the development of the UK's telecommunication's market but Ofcom must stay close enough to the detail of the market to carry through its stated commitment to put consumer interests at the heart of its policy making process. On-going problems such as tariff confusion, access to services for those with disabilities and misleading sales practices are just some of the issues that Ofcom must be prepared to engage with regardless of its vision for the future.
11. Integral to the Review should therefore be a desire on Ofcom's part to be fully informed of consumer preferences including analysis of what consumers really value. Lack of choice is certainly not a criticism that can be levelled at many sectors of the telecoms market today – from DQ services to mobiles to ISPs consumers are faced with a barrage of suppliers, tariffs and products. What is not so clear is whether that choice is appropriately informed. Ofcom needs to understand what prevents consumers from engaging with the market and applying their spending power most effectively. Through investigation into switching behaviour, including critical analysis of the role that clear, neutral, appropriate information can play, Ofcom will be able to develop strategies to make the market transparent to consumers and empower them to engage.

12. To reinforce this work the Panel strongly advises Ofcom to undertake rigorous consumer detriment analysis to ensure that it understands the consumer's position in the market. This must be conducted in such a way as to take into account the impact of detriment on particular groups of consumers and recognise that a quantitative evaluation of the totality of financial detriment across all consumers is not a helpful measure. Oftel began work in the area of consumer detriment and this should be starting point for future analysis in this area.

13. Of critical importance to those consumers who might be described as 'vulnerable' be that through income, impairment or geographic location is the continued provision of a properly defined and funded **universal service**. Ofcom must consider the duality of its role to further the interests of both citizens *and* consumers. The Review must therefore consider the wider social dimensions of policy, including the role regulation could and should play in reducing the so-called 'digital divide'. As more services - local and national government, retail, banking - go on-line, lack of connection to the internet could affect citizenship and create social inequality.

14. The conclusions reached by Ofcom in its parallel short-term review of universal service obligations must be flexible enough to accommodate any more far-reaching observations revealed by this Strategic Review. This must include options to enable continued funding of universal service obligations where increased levels of competition change the nature of the market in such a way as to diminish the justification for continued BT funding. The Consumer Panel will be working closely with Ofcom to develop lines of investigation into a new and evolving universal service obligation – an investigation that will extend beyond Ofcom into Government and Europe, to influence legislation where necessary.

### **Ofcom's questions**

15. Almost all of the questions posed by Ofcom have relevance to the interests of consumers and the Panel hopes that Ofcom shares swiftly the responses it receives to allow further open and transparent debate. The

Panel will be looking to ensure that Ofcom considers the following angles when reviewing responses received.

**16. Question 1:** *In relation to the interests of citizen-consumers, what are the key attributes of a well-functioning telecoms market?*

For consumers, a well functioning telecoms market will, at a minimum, meet the consumer tests outlined in paragraph 7 - access, choice, information, fairness and redress - and will consistently deliver the benefits of competition to all. In considering answers to this Ofcom would be advised to bear these tests in mind.

**17. Question 2:** *Where can effective and sustainable competition be achieved in the UK telecoms market?*

When considering responses to this question, there must be a parallel analysis of any measures required to protect consumers – regardless of the competitive state of the market.

**18. Question 3:** *Is there scope for a significant reduction in regulation, or is the market power of incumbents too entrenched?*

As a general trend, the technological changes anticipated in the consultation document should increase the opportunities for competition which in turn should serve the interests of consumers. But we believe at this stage that this is likely to result in a change in the nature of regulation – not necessarily a reduction.

In the short-term, the development of local loop unbundling and Voice over Internet Protocol will introduce substantial new competition into the provision of voice services. In the medium term, the construction of Next Generation Networks and especially BT's 21<sup>st</sup> century network will increase the scope for competition. These developments could be a major driver in reducing the market power of incumbents. An IP world will be very different from the one that has been regulated to date, with reduced start-up costs for new entrant network and service providers. Oftel began to

encourage co- and self-regulation but results have been mixed. That approach requires critical assessment.

These technological developments must however go hand in hand with developing consumer understanding. If not, the full benefits of increased competition and innovation will not be realised and increasing numbers of consumers will become disenfranchised, and the 'digital divide' will increase.

**19. Question 4:** *How can Ofcom incentivise efficient and timely investment in next-generation networks?*

Ofcom can best encourage such investments by providing a clear and stable regulatory framework, so that companies and shareholders are confident that these substantial investments can be made without the benefit being 'regulated away' in the future as a result of a changed regulatory regime.

Innovation and development of next-generation networks are key to the provision of a wide range of new services for UK consumers in the future. And there is clearly the potential for enhanced consumer benefits to be delivered as a result of investment in alternatives to BT's control of copper access and national backhaul networks. Regardless of service or means of delivery however, the continued protection of consumer interests must be an integral component to the development of the telecommunications sector.

**20. Question 5:** *At varying times since 1984, the case has been made for structural or operational separation of BT, or the delivery of full functional equivalence. Are these still relevant questions?*

These questions seem to us to be of diminishing relevance – but we essentially regard this question as outside of our remit.

**21. Question 6:** *How successful is the UK telecoms sector currently in delivering benefits to citizens and consumers?*



The Consumer Panel is aware that organisations representing disabled people and those on low incomes have highlighted failures in the way in which the UK telecoms market currently delivers benefits to those groups. It also recognises the access concerns of rural consumers. The Panel hopes to be able to provide Ofcom with a rich source of information when the results of its consumer research start to emerge later this year. This will address two key questions:

- b. What is the current consumer experience in the communications market?
- c. What is the level of consumer knowledge regarding what is going on in the communications market and the choices/alternatives they have now and will have in the future?

**22. Question 8:** *What impact will Voice over IP have on the telecoms market?*

This question needs to be expanded to assess the potential impact on consumers of a vast array of innovative IP services, including the ways that such services could change behaviour and empower consumers and whether safeguards will be required. The potential for text communication, video and VoIP offers scope for a range of new services for all consumers and in particular for those with disabilities. The Panel is clear that all consumers should in principle be able to benefit and Ofcom should be aware that as services take off there is the potential for social exclusion to grow.

**23. Question 11:** *When are operators likely to move towards 'all IP' architectures, if at all?*

An 'all-IP' architecture could allow for the provision of innovative services that benefit consumers. This type of infrastructure allows for provision of very niche services that may not have been economically viable in the traditional PSTN-world. For example, text messaging services, emails, are free in an all-IP world but comparatively expensive in the non-IP world (SMS texts over mobiles). We hope that carriers move significantly towards all IP architectures as rapidly as possible, provided, as we

continue to say, that this does not leave any group of consumers not provided for.

**24. Question 13:** *Is there likely to be widespread demand for services that require 'broaderband' networks to be rolled out and, if so, how will such infrastructure be supplied?*

The Consumer Panel recognises that broadband does not end with 512kb/s. The future could see a world where 10,000kbit/s (10mbit/s) is the norm for Internet access; necessitating on-going purchasing decisions as consumer determine whether improved speeds are appropriate for their needs. **Consumer information is critical if consumers are to be prepared for such developments.** It is, for example, not helpful to introduce terms such as 'broaderband' when what consumers really need to know is that broadband is a spectrum of capabilities – what consumers connect to today is merely a starting point for their connection of tomorrow.

Ofcom must also bear in mind that for some consumers, especially those in rural areas, the question of any broadband roll-out is what occupies them most, aligned with the significant question of who will pay for it e.g. satellite broadband if that is the only practical way of ensuring access.

**25. Question 15:** *How will future network evolution, such as growth of intelligence at the edge of networks, and the increased importance of control over technical standards and interfaces, affect the requirements of telecoms regulation?*

In considering the importance of network architecture and technical standards, the Panel would urge Ofcom to consider fully the benefits that can be delivered to consumers where standards are open and non-proprietary. Such an approach should enable and invite innovation. It also lowers switching costs relating to technology. Lower switching costs benefit consumers.

**26. Question 19:** *What is the right role for consumer policy? What impact do different approaches have on telecoms companies' perceptions of risk and return?*

As was made clear in earlier sections of this response the Consumer Panel starts from a position that consumers are best served by well-functioning, competitive markets. The entirety of Ofcom's regulatory approach – from which it is impractical to isolate consumer policy – should be to swiftly identify failures in the marketplace and act to influence provision of appropriate remedies. Furthering the interests of consumers must be a primary objective of a regulator but this has to go hand in hand with promoting an environment conducive to technological change and innovation. Holding back change through an overly cautious approach to risk is in the interests of neither consumers nor business.

**27. Question 20:** *What role should Ofcom take in signposting, providing, or ensuring that the market provides clear information to consumers, enabling them to make effective choices?*

The importance of the role consumer information can play in empowering consumers can not be overstated, and availability of information that is clear, accurate and useful i.e. in an accessible form for those consumers who need it has been highlighted as one of the key tests that should make up the Review. Such information is essential for informed purchase decisions and to prevent confusion in any marketplace and is critically so for an environment as complex as telecoms. Ofcom is encouraged to look at measures in place in other complex markets, such as financial services, to ensure comparable, standardised information is available.

Ofcom's role must be to develop a holistic view of the state of consumer information in the market and implement strategies to remedy the information gaps that exist. This must be a priority for the whole of Ofcom's regulatory remit and not be limited in scope to the telecoms market. The Consumer Panel has already engaged with Ofcom in relation to consumer information and will continue to press strongly for early resolution of this issue.

**28. Question 21:** *How may universal service arrangements need to evolve in response to changes in the telecoms market?*

The Panel has already set out its views on the need for a new and evolving universal service obligation in paragraphs 13 and 14. This is an issue that extends beyond the UK into Europe and the Panel would encourage Ofcom to pave the way with this Review for a wide-ranging public debate encompassing the full range of citizen and consumer dimensions.

Achievement of a universal service obligation appropriate for the 21<sup>st</sup> century has to be fundamental to Ofcom's own objective of "encouraging the evolution of electronic media and communications networks to the greater benefit of all who live in the United Kingdom".

**Conclusion**

29. The importance of this review is great – it has been 20 years since the last major review of this market-place. Glancing back at the changes seen since 1984 illustrates not only the rate of technological change but the impact it can have on society. From a world where telephony was simply telephony – phones were used for making one-to-one calls from fixed location, the fax revolution had not begun and internet use on the scale we see today was hard to imagine – to today's world of real product and service differentiation we can see the changes technological advances can bring to both attitudes and behaviour.

30. The decisions Ofcom reaches as conclusions to this review will therefore need to be cast for a world which is as yet undiscovered. This calls for flexibility in approach, technical neutrality in solution and implementation that is robust. The Consumer Panel will continue to press hard the case for consumer interests to be at the heart of all developments and will be looking closely at the results of both Ofcom's and its own research, to make this case.