



Internet Telephony Services Providers' Association

ITSPA response to Ofcom's Strategic Review of Digital Communications **Discussion Document**

About ITSPA

The Internet Telephony Services Providers' Association (ITSPA) represents over 80 UK businesses involved with the supply of next generation communication services over data networks to industry and residential customers within the UK. Our traditional core members are VoIP providers. ITSPA pays close attention to both market and regulatory framework developments on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within both national and international markets.

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>

Introduction

ITSPA welcomes the opportunity to respond to the Strategic Review of Digital Communications Consultation (the "Consultation"). We have responded generally regarding the themes that affect our members, rather than to each of the individual questions contained in the Discussion Document.

Please note that certain aspects of the ITSPA response may not necessarily be supported by all ITSPA members. Individual members may respond separately to this consultation where a position differs. However the ITSPA Council is confident that this response reflects the views of the overwhelming majority of ITSPA members.

Structural Separation of Openreach

ITSPA's members generally want a functioning access network provider which provides a quality service, timescales which can be relied upon, and faults/installations performed right first time. Whilst some esoteric accusations, such as the cash flows generated by Openreach being used to subsidise BT's diversification, may be addressed by structural separation, we currently fail to see how, as a remedy in itself, this change does anything to address our most fundamental concerns.

Ofcom is well aware of the service failings of Openreach; it has alluded to this in the most recent market reviews affecting local access and data services. It has also been provided, either directly, or via the Office of the Telecommunications Adjudicator, other evidence of industry concerns regarding this issue.

Improvement can only come about in this area through strong regulatory intervention and/or through a revision to the Undertakings to the same end. ITSPA would strongly recommend an immediate review of these undertakings to ensure Openreach meet the standards expected and that effective penalties around under performance are properly adhered to.



Internet Telephony Services Providers' Association

Switching (and Number Portability)

The majority of our members provide a niche over-the-top service which competes with one particular element of so-called "Quad Play" bundles. Whilst it may be that some consumers benefit from large, vertically and horizontally integrated entities providing such packages, we must be very careful to ensure that any extolling of their virtues in this review does not impede the innovation that our members can perform to the benefit of other consumers. We already see that the supernormal margins made on line rental distort the market against our members, i.e. used to subsidise inclusive call packages and further cross subsidy may compound the issue.

Fundamentally, a liquid market for customers is one of the bedrocks of competition in the telecommunications industry. To that end, we have made a separate submission on number portability, which we feel has enough problems to warrant such a detailed separate response. This outlines our members' concerns around the current number porting process and suggests a consultation to produce effective guidance for the various porting scenarios that create misinterpretations around GC 18. It also stresses the need for Ofcom to consider a more effective long term solution for Ofcom to consider to bring the UK in line with other countries who have much more efficient number porting systems.

We fail to see why telephone numbers are so strongly associated with subscriptions; this is leading to exhaustion of the supply of mobile numbers as they are consumed by data only services in tablets and cause problems in customers switching their phone number to our members as that can cause the broadband connection to be ceased, for example. Furthermore, there are a myriad of complex scenarios that present barriers to switching that are only just being addressed; BT still struggles to export numbers used on Featureline and it was only recently that a customer could easily revert from a local-loop unbundled service to a more traditional wholesale line rental based one. Ofcom needs to work continuously, as the market develops, to prevent these smaller barriers, which often add up to more than the sum of their parts in the eyes of the end user, becoming distortions in the market.

We also note that there appear to be inconsistent definitions of "free" and "unlimited" that pervade the industry and from a consumer protection stand point we are keen to see the regulator take action against any abuses and to educate consumers.

Convergence and Competition

The UK is widely regarded as having one of the most vibrant and competitive telecoms markets in the world. ITSPA, as a trade association comprised of members ranging in size from start-ups and SMEs to multinationals with multi-billion pound turnovers, is keen to ensure that the market remains open and competitive and we have made the following observations and suggestions on how to maintain this environment.

We have made submissions to the Competition and Markets Authority ("CMA") regarding the proposed BT/EE transaction and the European Commission surrounding the O2/Three merger. We do not intend to duplicate our responses here, save to make some headline points.

ITSPA members are not in principle against market consolidation and where it improves competitiveness and consumer experience then we welcome it. However many of our members have serious reservations surrounding the current merger activity that threatens consumer choice, creates further



Internet Telephony Services Providers' Association

barriers to entry in certain markets and hampers both competition and innovation. Evidence from other European countries has already indicated that market consolidation has resulted in price increases for consumers.

We, and others, said from the start of the BT/EE transaction that it was the beginning, and not the end, of another round of consolidation. Since then, we have seen the proposed O2/Three merger and other discussions amongst major operators which suggests more activity is imminent.

Many ITSPA members believe there are already serious competition issues within the current UK mobile market that need to be resolved and which could be made worse by further consolidation. The mobile market is generally foreclosed already to other operators through contractual limitations on over the top services or restricting access to 4G. Despite the claims of various MNOs engaged in consolidation currently, there is a highly restricted wholesale market for MVNOs which needs addressing.

This would be constricted even further if the two proposed mergers take place. The outcome will be two Mobile Network Operators, ("MNOs"), (Vodafone and BT) who are converged, vertically integrated fixed/mobile players operating on their own networks, and a third that is the combined O2 and Three. This is both a vertical and a horizontal concentration.

Access for Mobile Virtual Network Operators ("MVNOs") to MNO supply will also be restricted, and current trends by which MNOs are restricting MVNO competition are likely to increase. This in turn would, evidently, reduce competition and result in an upward pricing pressure to the detriment of consumers and innovation.

Furthermore, there are growing concerns about access to mast infrastructure within a shrinking number of MNOs that will hinder competition.

ITSPA's membership believes that before any decisions around further consolidation are made, it is essential that the Wholesale Mobile Access market in the UK is reviewed and effective remedies are agreed. A fully functional Wholesale Mobile Access market would encourage innovation and competition, resulting in improved outcomes for UK consumers. In our responses to the CMA's inquiry into the proposed BT/EE deal and the European Commission's inquiry into the proposed merger of O2 and Three, we have supported a document produced by ITSPA member Gamma which sets out a number of potential remedies in this area. We have submitted a copy of this alongside this document and would urge Ofcom to review and consider the remedies that it outlines.

If Ofcom gets the wholesale market right, generally speaking the retail market will take care of itself. Alongside a liquid market for consumer switching, these are the two fundamental hygiene factors Ofcom needs to ensure to be in with a chance of discharging its statutory duties.

Net neutrality

Our arguments on net neutrality are well rehearsed; we note and welcome the recent EU regulation, and see that as a positive start to a programme to guarantee the ability of end users to access the content they want and not the end. We would welcome dialogue into how this is properly implemented in practice at a national level and how the Broadband Stakeholder Group's (BSG) Open Internet Code will continue now a regulation has been agreed. We would also welcome dialogue on ensuring an



Internet Telephony Services Providers' Association

effective reporting mechanism for identifying incidents of blocking or the degrading of traffic as well as ensuring there are tough penalties for this type of anti-competitive behaviour.

We remain concerned that the firmware on some ISP supplied routers interferes with over the top applications and would welcome the involvement of Ofcom in supporting work through NICC and the BSG to bring a voluntary industry conclusion to this matter.

ITSPA's main focus around this issue has been the mobile market, due to certain behaviour in recent years. Our views around market consolidation and the dysfunctional Wholesale Mobile Access market suggest that ongoing behaviour will still need to be monitored. However, in general we welcome the progress that has been made in this area and believe the EU regulation will provide new CPs with greater confidence in investing in the mobile market, without the fear of anti-competitive behaviour undertaken by the network operator.

Industry liaison

Our members note that for a single industry, we have multiple government and regulatory "touch points", DCMS and BIS are both involved alongside Ofcom, BEREC, parliament, the European Union and various tax agencies for business rates. A more clever demarcation or at least clearer guidance on areas of responsibility would be appreciated by smaller entities which cannot match larger players in terms of resources committed to regulatory and public affairs.

Regarding Ofcom's role and bearing in mind the convergence and change in the market, it is critical that the regulator remains "fleet of foot" and able to react quickly to developments. In no small part this is achieved by not fettering its discretion too far in advance, and we would suggest that this review should focus more on desired outcomes than perhaps the tools and specific opportunities for deregulation it raises as questions.

Naked DSL

In keeping with our comments above about line rental being used to cross subsidise inclusive calls, we have also just completed a draft paper, with the assistance of BT, showing that Naked DSL is not presently economically viable. We very much hope that as exchange equipment is replaced that the issues we note about testing being the primary reason for this inability to produce a product is taken on board and that Ofcom at least have a policy preference for as little "metallic path" as possible to be used on future access products.

Number Ranges

Our members also feel that they are presently commercially disadvantaged by having to take either a 1000 number block in areas that are charged (some would say "taxed") for an order that may only consume a few, or take a commercially sub-optimal sub-allocation deal from another network. We



Internet Telephony Services Providers' Association

recognise that economies of size and scale are a feature of our industry, however, this distortion is caused by Ofcom not making available smaller blocks on request; the lack of investment by legacy asset heavy operators in decode systems should not cause a competitive distortion to our members.

Telecoms Fraud

As the only trade association taking an active lead on issues regarding telecoms security and fraud in the UK, we are very disappointed that there remains no process in place for Ofcom to request the withhold of an out-payment in the EU pursuant to Article 28(2) – a power that has existed for 4 and a half years now. Some estimates place telecoms fraud as being equivalent to a 2% retail shrinkage, or to put it another way, consumers phone bills are 2% higher than they need to be because of fraud; a lack of closure by BEREC in this regard is extremely concerning.

Business Focus

ITSPA has already highlighted its belief that a greater focus around businesses should be included within Ofcom's remit. Whilst the residential market is obviously important, ITSPA believes Ofcom must also have the necessary powers and the correct administrative priorities to secure outcomes for all businesses, especially given current, residential market driven consolidation. Communications problems are just as important for SMEs as residential customers and, given this sector is vital for economic growth, we do believe a greater focus is required. We have already highlighted our concern around Ofcom's current remit around small businesses market and do not believe the 10 employees or fewer is a suitable metric.

Conclusion

ITSPA would welcome further dialogue with Ofcom on these thoughts as the Strategic Review develops to help provide as much constructive feedback as possible.