



Internet Telephony Services Providers' Association

ITSPA submission to Digital Economy Bill Public Bill Committee

About ITSPA

The Internet Telephony Services Providers' Association (ITSPA) represents over 90 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

The UK is a world leader both in terms of its widespread use of digital services and the high level of competition that exists within the digital economy as a sector, particularly in the area of telecoms. It is vital that the UK maintains its reputation for embracing digital change and being open and friendly to new technologies. ITSPA therefore broadly welcomes the Bill, the intentions behind it and the measures it would introduce, but would like to provide comments on several key areas of concern for ITSPA. These are primarily the Bill's provisions in relation to automatic compensation and nuisance calls.

Automatic Compensation

Whilst ITSPA welcomes the Government and Ofcom's focus on measures to reduce consumer harm in this area, it is vital that the following factors are considered which need to be addressed urgently to ensure that a system of automatic compensation can be effectively implemented.

Performance of Openreach and the need for reform

Firstly, as Parliamentarians are already well aware, the performance of Openreach has many shortcomings. It should therefore be highlighted that much of the harm that the Government and Ofcom are seeking to address is in fact often caused, at some point, by Openreach. Due to the structure of the UK's telecommunications infrastructure, it is almost impossible to provide communications services and not at some point rely on Openreach at some point.

Whilst ITSPA does not support full structural separation of Openreach, we have long called for the introduction (and effective implementation) of financial penalties in the event of Openreach underperformance.

We would also like to highlight that an automatic compensation scheme already exists for some Openreach products, but there is limited evidence to support that this has in any way improved performance of the organization.



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ITSPA would therefore recommend that Government encourage Ofcom to provide further details on the introduction and implementation of measures to improve the service performance of Openreach before any automatic compensation scheme enters into force.

Supply chain complexity

Parliament should also be aware that the complexity of the supply chain in the provision of next generation communications services may make it highly difficult to establish from where any compensation payment should originate. Many ITSPA members, and indeed a large proportion of communications providers, are now so-called OTT providers, i.e. they rely on providing services over-the-top of others' data networks. These networks may have contracts in place with the End User themselves, and if there were an outage which affected a voice product, which was either caused or exacerbated by the data network, it would be unclear as to which should pay compensation to the customer.

Impact on small communications providers

Automatic compensation requirements could have a devastating impact on SME communications service providers. As mentioned, over-the-top providers could essentially be made bankrupt as a result of a fault in another company's end user relationship. The majority of ITSPA members are SME CSPs and we are concerned that the proposals could have a highly damaging impact on innovation and competition in the UK's telephony market, which is currently one of the most diverse and vibrant in the world.

Conclusion

Regarding the introduction of a system of automatic compensation, ITSPA would urge Government to provide clearer details on how such a system would work in practice. These details are required so as to ensure that the regime of automatic compensation introduced would not have a negative effect on competition and prices across the telecommunications industry.

Nuisance calls

ITSPA fully recognises the problems experienced by the general public and the concerns raised by parliamentarians, regulators as well as consumer and industry groups around the issue of nuisance calls over the last few years. Nuisance calls are a recognised problem within the telecoms industry and one that our members are extremely committed to help reducing in scale. They come in various guises from certain types of unwanted and persistent marketing calls or messages to abandoned, silent and most seriously, malicious calls.

ITSPA welcomes the provisions in the Bill that are intended to strengthen the powers of the Information Commissioner's Office in this area. ITSPA has long pushed for the enforcement rules on nuisance calls to be improved and believe that this is a crucial step in combating this problem.



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ITSPA would also like to use this opportunity to highlight to Parliamentarians that a significant proportion of nuisance calls originate from overseas (and indeed mostly outside the EU). Greater international cooperation is therefore required to help eradicate this problem and we would recommend that the national regulators from both inside and outside the EU are encouraged to enter constructive dialogue on this issue.

Definition of "small business customer"

ITSPA would also recommend that Parliament use the opportunity presented by the Digital Economy Bill to alter the current definition of "small business customer" for communications providers (CPs) that is unsuitable and unworkable.

Background

Sections 16(13)(b)(ii) and 52(6) of the Communications Act 2003, the legislation that forms the basis of all Ofcom consumer protection powers, define the term "domestic and small business" customer. The definition in 52(6)(b) specifically defines a small business as smaller than "*a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).*"

In practice, this means where Ofcom has legislated in various areas such as the ban on auto renewing contracts, the requirement for an alternative dispute resolution scheme, or, as the Bill sets out, where it intends to provide for the right to make compensation automatically payable, CPs have to make an assessment as to whether the rules apply or not to a specific business customer.

The problems surrounding the current definition

The current definition in the Communications Act 2003 creates unintended consequences and is extremely hard for CPs to administer. Most notably, the definition could lead to difficulties around the automatic compensation proposals contained within the Bill. How will a CP pay compensation automatically (or even calculate its liability in accordance with relevant accounting principles) as intended by Parliament without any independent and accurate external register of the number of employees in a business or other body?

Other problems include:

- The definition is extremely inflexible and leads to many anomalies. For example, a boutique firm of 9 telecommunications lawyers gets more protection from abusive practice by CPs than a charity with 11 volunteers. This cannot be correct.
- The definition creates confusion for CPs. For example, if a customer states it has 11 employees at the time of entering into a contract with a Communications Provider and agrees, freely and lawfully, to an auto renewing contract at that moment, is that contract automatically unlawful if they make 2 employees redundant?



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ITSPA's Recommendation

ITSPA would therefore urge Parliament to use the opportunity provided by the Digital Economy Bill to define "small business customer" more appropriately. A more suitable definition is required in part to ensure that the regime of automatic compensation that the Government and Ofcom intend to introduce is truly effective and would also help CPs interpret the requirements in a more reasonable way. Furthermore, a workable definition would resolve the confusion that currently exists and would provide clarity to both CPs and consumers alike.