



Mr Nic Green
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SE1 9HA

13 March 2007

Dear Nic,

Response to Proposal for modification of General Condition 17

FleXtel welcomes the opportunity to respond to the above consultation, namely that the following shall be inserted in General Condition 17 - "Requirements in connection with the use of telephone numbers":-

17.13 The Communications Provider shall comply with the designations for UKwide Numbers (03) and Personal Numbering Service (070) in the National Telephone Numbering Plan when using those numbers for the purpose of its Customers making calls to UK-wide Numbers (03) and Personal Numbering Services (070).

Question 1 Do you have any comments on the proposed amendment to General Condition 17 as set out in Annex 5 of this document?

To be clear, FleXtel supports Ofcom in its Policy Objectives to reduce scams and improve call price transparency for the benefit of the Consumer/Citizen. We also have much sympathy with the Consumer lobbyist, such as saynoto0870¹ and others. However, we are deeply concerned that Ofcom has wrongly targeted its solution. We have demonstrated this in our proposal calling for universal call price labelling made several times over a number of years². Ofcom has acknowledged our approach, in a number of its statements, and stated it has merit. Price transparency is acknowledged to be a key driver for the efficient operation of competitive markets³. However, even though our proposal would deliver full call price transparency, Ofcom has declined to press forward with the 'novel' proposal, that would enable any caller to check the price of a call before placing (purchasing) it.

Targeting

We fully understand that Ofcom's reluctance to grasp this nettle, where an apparent very high cost of such pre-call announcements is claimed by incumbent OCP's. Ofcom had tacitly accepted this, but we believe that such claims are unsubstantiated and have yet to be audited by Ofcom. Our proposal anticipated such strong cost/benefit objections, and so provided three options to allow all OCP's to find a cost effective and logistically reasonable path to deliver universal call price transparency to the UK Telecom market at reasonable cost and in sensible time scales. Considering the cost benefit of a facility we cannot understand why Ofcom has not progressed this matter with more enthusiasm.

¹ Consumer lobby - <http://www.saynoto0870.com/>

² Universal Call Price Labelling - <http://www.flextel.co.uk/ofcom/>

³ E.g. Supermarkets and shops label all items with accurate prices, as do most Internet product and service delivery systems.

We have supported Ofcom's GC 14⁴ initiative. GC14 is designed to somewhat improve price transparency for 0870 and other 08 codes and we hope this may reduce some of the more extreme retail price mark-up, made by mobile service providers⁵. However, even the highly accurate BT price list is very difficult to read and decode. We challenge any reader to try finding out the accurate price for a call to a mobile in under a minute. This price varies from under 3 pence per minute to over nearly 22 pence per minute, depending on the time of day and the mobile network dialled and your home-calling plan⁶. This is an unreasonable state of affairs for the Citizen/Consumer, who should be provided with an accurate price at the point of purchase i.e. just before they place a call.

The GC17 modification is the last of a long series of piecemeal and intrusive interventions by Ofcom. It is simply a work-around for the core problem of severe price opacity in the Telecoms market. This is leading to partial failure of certain segments in the market. Such failure has led to scams and rapacious pricing, even at the corporate level.

We greatly appreciate Ofcom's recent effort in publishing an updated set of General Conditions on the 19th December, last year⁷, since this increases the level of Regulatory Certainty and Transparency for all concerned. However, it also demonstrates the increasing level of micro-regulation that Ofcom is prepared to immerse itself, in order to compensate for poor call price transparency. The original 21 conditions, published on the 22nd July 2003 ran to 39 pages⁸. The latest version, of some 69 pages, contains amazing details such as "*reasonable endeavours to be made to retrieve the identification badges of staff leaving the company*".

GC17 in conjunction with an updated and more prescriptive Number Plan⁹ attempts to enforce partial consumer price protection, by controlling 03 number pricing to Geographic levels and limits 070 pricing to 20p per minute, unless a free price warning announcement is played. It is worth noting that the threshold of 20p per minute is less than the most expensive mobile call charges. Personal numbers are defined in the revised Number Plan as a Telephone Number...

...which allows a Subscriber to receive calls or other communications at almost any Telephone Number, including a Mobile Number...

It is therefore obvious that to effect full functionality all Personal Number providers (TCPs) must charge a wholesale rate of more than 22 pence per minute rate for the most expensive mobile. However, in an attempt to avoid triggering announcements, a TCP might choose to bar the more expensive mobile destinations, and thus be able to lower its wholesale rate. Unfortunately there is no guarantee that all the OCPs would consider the residual margin adequate and so may set the Personal Number provider's retail above the 20p threshold or simply close that niche 070 service (*see discussion below*).

Ofcom argues that it is up to OCP to decide how to set its rate, but fails to note that that rate should reasonably be above the wholesale rate of the TCP. The OCP would otherwise have to

⁴ GC 14 – Improved price transparency - http://www.ofcom.org.uk/consult/condocs/nts_info/statement/

⁵ Mark-ups of a wholesale price of under 6 pence per minute (the most FleXtel and other providers receive for 0870) to a retail price of £1 per minute, has been noted by Ofcom.

⁶ BT Calling Plan - http://www2.bt.com/static/i/btetail/consumer/home/home_phone/calling_plans.html

⁷ 2006 Version of General Conditions - http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/cvogg.pdf

⁸ 2003 Version of General Conditions - http://www.ofcom.org.uk/static/archive/ofel/publications/eu_directives/2003/cond_final0703.pdf

⁹ National Telephone Numbering Plan – Revised 13/Feb/2007 - <http://www.ofcom.org.uk/telecoms/ioi/numbers/numplan0207.pdf>

originate calls at a loss. This is one example of the unintended effects of price controls. It will constraint innovation, bona fide competition and is no substitute for proper price transparency.

Unintended Consequences

Looking deeper into Ofcom's recent regulatory regime, is there not a significant risk that, rather than comply with the proposed 03 and 070 restrictions, OCP's, other than BT, simply re-examine the business case for each?

The mobile operators have been at pains to remind Ofcom of their higher origination costs. Interesting when Vodafone advised Ofcom of this¹⁰ Ofcom responded thus:-

Vodafone also suggested that the pre-announcement approach discriminates against mobile providers because of their [higher] origination costs.

Ofcom does not accept this: mobile providers can still price 070 calls as they wish, and all OCPs are in the same position in terms of being able to recover the cost of pre-announcements.

Ofcom clearly misses the point. Indeed so serious is this issue that the MNOs are now in a full-blooded dispute with BT over their higher costs¹¹. Ofcom is therefore now examining this issue in detail, so soon will be in a position to understand the cost arguments better.

Ofcom recognises that the MNOs now originate 31% of the UK calls¹², i.e. more than BT. Unlike BT, the MNOs and other OCPs simply do not have an End-to-End obligation, as reconfirmed by Ofcom last year.¹³ So they do not have to open or maintain services if they do not consider them to be commercially viable. For niche 070 service providers this is a significant business risk, which Ofcom has just increased, we assume unintentionally.

The Business Case for 070 Closure

Considering Ofcom has stated that 070 call volumes are very low, one viable business option, for Vodafone (*and I speak from experience*) and other MNOs, is simply to close 070, rather than go to the expense and complication of deploying pre-call announcements for such an insignificant revenue stream. Thus we must ask...

1. Has Ofcom assessed whether the MNO and others plan this action?
2. What is Ofcom's Impact Assessment for this risk?
3. What is the expected level of Citizen/Consumer detriment for failure of essential services running on 070 (e.g. Patientline¹⁴, 24x7 emergency [medical] numbers)?

This scenario is also true for those 0870 TCPs, who cannot lower their termination rate since extremely low customer call volumes makes billing the called party not sustainable. FleXtel has written separately to Ofcom via the NTS Focus group¹⁵ on this matter.

FleXtel is deeply concerned about these unintended risks of price controls and would ask Ofcom to quantify them, by canvassing the OCPs, particularly the MNOs on these specific issues.

¹⁰ Responses - <http://www.ofcom.org.uk/consult/condocs/numberingreview/statement/responses/>

¹¹ BT v MNO dispute - http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_942/

¹² The Communications Market 2006 - <http://www.ofcom.org.uk/research/cm/cm06/telec.pdf>

¹³ End-to-end connectivity – BT only - http://www.ofcom.org.uk/consult/condocs/end_to_end/end_to_end/

¹⁴ Patientline - <http://www.patientline.co.uk/>

¹⁵ NTS Focus Group - http://www.ofcom.org.uk/telecoms/groups/nts_focus/

The Business Case for 03 Failure

The MNOs have alerted Ofcom that they face a below cost issues on Ofcom's 03 regulations, due to their obviously higher origination costs¹⁶. One business option is for MNOs not to open 03. The resulting business case for 03 Government Users is to wait, until 03 access is universally available. No major Government department would dare open 03 without access from Prepaid mobiles regularly adopted by vulnerable Citizens. Thus the 03 initiative has a risk of being still born and fails to deliver its key benefit for transformational government as lauded in the Varney report¹⁷.

"3.23 A recent Social Exclusion Unit Report highlighted that information technology can help reach the socially excluded and some vulnerable groups, for example, some homeless people have mobile phones..."

7.27 Public sector access numbers have confusing charging tariffs. For example, calls to 0800 numbers are free if made from a landline phone but incur a charge if made from a mobile phone... ...The launch by Ofcom of the new 0300 number range in 2007 presents government with a unique opportunity to implement a single number range to simplify access to government services."

Surely a catastrophe for Ofcom and Government Policy Objectives?

However, if for sound business reasons, the MNOs and other stakeholders do not buy into the dream of helping the vulnerable in society, what can Ofcom do about it?

It could to review its end-to-end policy statement once again, in the light of a threat to its 03 initiative, in order to compel OCPs to play along. However, this leads us all deeper into the micro-regulatory labyrinth.

FleXtel recommends that Ofcom check the unintended consequences of this important initiative and it needs to consider whether all stakeholders will bother to implement 03.

FleXtel also recommends that Ofcom revise its 03 initiative so that the stakeholders are interested. E.g. throw-out much of the micro-regulation and deliver proper price transparency using 21st century technology. Skype and others already do this, why can't Ofcom?

Consistency

Even accepting Ofcom's micro-regulatory approach...

1. Why do GC17 and the supporting regulations need to discriminate against 030 and 070 services?
2. Why has not Ofcom included 0870 and 0845 and 09 codes in its GC17 modification?
3. Surely the revised GC17 itself is inconsistent and should be applied to all numbers in the numbering plan?

e.g.

17.13 The Communications Provider shall comply with the designations for Numbers in the National Telephone Numbering Plan when using those numbers for the purpose of its Customers making calls to such Numbers.

Is not this shorter alternative text more consistent with more impact and with fewer words?

¹⁶ Due to the £ 22 billion 3G-spectrum tax levied, by the UK Government, and the resulting debt serviced via higher mobile charges.

¹⁷ Service transformation - http://www.hm-treasury.gov.uk/pre_budget_report/prebud_pbr06/other_docs/prebud_pbr06_varney.cfm

Time Scales

We are surprised at the haste with which Ofcom is building its house of cards. I would respectfully remind Ofcom of its own Better Policy Making objective¹⁸. With full call price labelling, there would be no need for:-

- Wholesale price controls, that have caused MNO disputes with BT and Ofcom;
- Current controls on 0844, 0845, 0870 and 0871 ...price points could be removed from BT and this would promote stronger competition;
- Controls on 070 (all calls will be labelled anyway) would be unnecessary;
- Much of GC14 could be simplified. (GC14, originally 1 page, is now 17 pages);
- Consumers would more easily spot scammers and excessive service costs;
- ICTIS¹⁹ rules would be simplified and the ASA²⁰ rules would be better satisfied.

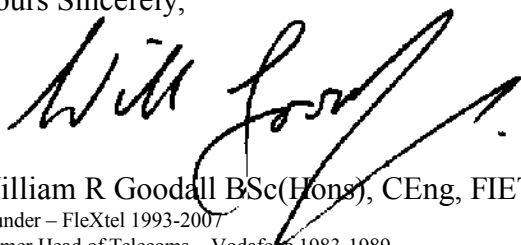
Skype and others already lead the way with full call price labelling, why can't Ofcom?

FleXtel recommends that Ofcom's 03, 07, 0870 and 0871 sticking-plaster initiatives are postponed, until Ofcom has fully assessed the unintended consequences of its recent micro-regulatory proposals.

FleXtel also recommends that Ofcom does a proper, audited, cost benefit analysis on "Call Price Labelling" to deliver real price transparency and not treat it as a cute idea...

...After all, price transparency is a basic for any properly functioning free market.

Yours Sincerely,



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Former Head of Telecoms – Vodafone 1983-1989

¹⁸ Better Policy Making - Ofcom's approach to Impact Assessment - http://www.ofcom.org.uk/consult/policy_making/

¹⁹ Independent Committee for the Supervision of Standards - <http://www.icstis.org.uk/>

²⁰ Advertising Standards Authority - <http://www.asa.org.uk/>