



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to BIS consultation on a Direction to Ofcom to Implement the Wireless Radio Spectrum Modernisation Programme

February 2010

Introduction

Consumer Focus welcomes the opportunity to respond to this consultation on a Direction to Ofcom to implement the Wireless Radio Spectrum Modernisation Programme. This response is not confidential and we are happy for it to be published on the website of the Department for Business, Innovation and Skills (BIS).

About Consumer Focus

Consumer Focus is the statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, Northern Ireland. We are the voice of the consumer, and work to secure a fair deal on their behalf. We were created through the merger of three consumer organisations – energywatch, Postwatch and the National Consumer Council (including the Welsh and Scottish Consumer Councils). The new approach allows for more coherent consumer advocacy, with a single organisation speaking with a powerful voice and able to more readily bring cross-sector expertise to issues of concern.

Spectrum modernisation

Consumer Focus is supportive of the broad intention of the Government's spectrum modernisation programme. The release of previously occupied 'digital dividend' spectrum presents an opportunity not only to examine how this spectrum is used to best deliver new services and technology to consumers, but also to review the mechanisms by which spectrum currently allocated to existing operators in the market is managed. This programme can pave the way for a range of far-reaching benefits to consumers, businesses, the economy and society. Equally, however, delays in the process could yet see the digital society in the UK fall further behind that of our international counterparts. It is important that the Government does not allow this to happen.

The preparation of this Direction to Ofcom is taking place against the backdrop of the joint venture between the UK operations of France Telecom and Deutsche Telekom. Consumer Focus has written formally to the European Commission to request that the proposed merger be given thorough and detailed scrutiny by the relevant authorities in the UK¹. We have also welcomed the request to the Commission by the Office of Fair Trading to carry out a UK review of the merger. Our letter made specific mention of the prospect of the merged company holding virtually the entire allocation of 1800MHz spectrum in the UK and noted that the implications of this scenario need to be assessed in the context of the Government's spectrum modernisation programme. Our concern is that permitting spectrum to be held by mobile network operators in a set of allocations that allow significant variations in the delivery of new technology and services could harm the competition required to ensure that consumers have widespread access to these services at an affordable price within a reasonable timescale.

Liberalising existing spectrum holdings would benefit consumers

Consumer Focus supports the Independent Spectrum Broker's proposals to liberalise existing spectrum holdings. We believe consumers stand to benefit from the delivery of 3G services via the 900MHz and 1800MHz spectrum following the implementation of the GSM Directive and decision of the Radio Spectrum Committee, in addition to those GSM services currently being delivered using these spectrum bands. We agree that making spectrum licences indefinite, tradable and subject to revised licence fees would represent an improvement to the way in which radio spectrum is managed.

While Consumer Focus welcomes the facilitation of more extensive provision of 3G services, we note that GSM services currently retain considerable popularity among consumers. The uptake of 3G services only reached 25 per cent of total mobile subscriptions for the first time in 2009². The higher cost of 3G handsets is likely to mean that vulnerable or low income consumers in particular are more likely to use 2G mobile phones. Given the pressure that is currently on mobile network operators to meet demand for spectrum-hungry data services, we believe it is important to ensure the quality of GSM services used widely by consumers is not downgraded when 3G and GSM services co-exist in the 900MHz and 1800MHz bands.

¹ This letter, which was co-signed by Consumer Focus and the Communications Consumer Panel, has been published on the Consumer Focus website:

<http://www.consumerfocus.org.uk/assets/1/files/2009/12/Consumer-Focus-joint-letter-to-EC-regarding-Orange-TMobile-merger.pdf>

² In Quarter 1 2009, 3G subscriptions accounted for 25.32 per cent of all UK mobile subscriptions (Ofcom).

Combined auctions

The consultation paper addresses the intention to hold a combined auction of the two bands of digital dividend spectrum at 800MHz and 2.6GHz. It is in the consumer interest to hold the auctions of these spectrum bands in a timely manner. It is also in the consumer interest to allow mobile network operators to acquire spectrum in a way that allows them to make appropriate decisions about investment and the provision of new services more easily. Consumer Focus would therefore support the proposal to hold a combined auction for these two portions of spectrum. Regarding the judgement over whether or not to hold an early auction of the centre 50MHz of the 2.6GHz spectrum, we would consider it appropriate to auction spectrum in such a way as makes new technology and services available to consumers as promptly and efficiently as possible.

We believe that it is important to encourage competition in the deployment of next generation services and agree that rebalancing spectrum holdings through caps applied during the auction process to ensure a more even spread among mobile network operators could act as an important driver to achieve this. However, other mechanisms in addition to these caps may need to be considered in future. The forthcoming GSM Directive will enable 3G services to be deployed in the 900MHz band, with the lower costs involved in delivering 3G services at these frequencies likely to result in a competitive advantage to those operators who currently hold spectrum in this band. The GSM Directive pre-empts this scenario by obliging member states to act on competitive distortions, such as situations in which 900MHz holdings are not evenly spread across mobile operators, as is the case in the UK. The spectrum cap on the 800MHz band, which requires any holdings of 900MHz to be given up in an equal exchange for 800MHz spectrum, is one mechanism for dealing with this competitive distortion. However, it will be necessary to look at additional mechanisms, should this spectrum cap fail to bring about a balanced set of spectrum holdings between operators.

Consumer detriment caused by poor network coverage

Consumer Focus has previously raised concerns about consumer detriment caused by poor mobile network coverage. In a consultation run by Consumer Focus between April and June 2009, which asked consumers to identify the biggest problems they face as mobile phone users, mobile 'not spots' were the most commonly mentioned complaint³. We are therefore pleased that the Government has chosen to support the Independent Spectrum Broker's proposal for coverage obligations to be placed on 800MHz, 900MHz and 2.1GHz spectrum. With spectrum better suited to the provision of 3G coverage across wide areas becoming available, it is important to capitalise on this in order to address the gaps in coverage that currently exist.

We note that the obligation will be placed on the 800MHz and relinquished and re-awarded 900MHz licences to provide services to 99 per cent of the population. As noted above, the GSM Directive will enable 3G services to be delivered using the 900MHz band. It is not clear from the description of this coverage obligation in the consultation paper that this 99 per cent will apply to both 3G and GSM services delivered in the 900MHz band. We assume it is the intention for the coverage obligation to apply to all services within the band, but note that the parameters of the obligation could perhaps be more carefully spelled out to ensure clarity around this point.

Further to the need for clarity around the coverage obligation, the consultation paper rightly notes the danger of allowing ambiguity in relation to the phrase 'lightly loaded cell'.

³ *Consumer Focus Priorities in the Mobile Phone Sector* (p.18)
www.consumerfocus.org.uk/assets/1/files/2009/11/ConsumerFocusprioritiesinthemobilephonesectorOctober2009.pdf

Defining the appropriate level of simultaneous data downloads on which to base the obligation is challenging because of variations in population density in the areas in which services will be delivered. There is an apparent tension between the arduousness for mobile network operators of meeting the proposed coverage obligation in urban and rural areas. We are concerned that, if operators argue that the proposed obligation is too challenging to deliver in areas of high population density, a reduction in its extent (to a proportion of the population lower than 0.1 per cent simultaneously downloading data, for example) could result in the obligation being ineffective in rural areas. In this case, we suggest that consideration could be given to variations in the specific terms of the obligation across different geographical areas, rather than a 'one size fits all' approach to coverage obligations. We would not wish to see a reduction in the extent of the coverage obligation as it affects rural areas, and indeed believe there is some scope for increasing the obligation to higher than 0.1 per cent of the population simultaneously downloading data. Fort William, in the Scottish Highlands, is a town of 10,000 people and a main tourist centre; 0.1 per cent of its population would equate to just ten people using simultaneous downloads. Consideration should be given to raising this proportion in order to guarantee that the use of coverage obligations delivers a sufficient level of service to consumers.

While being supportive of the 99 per cent coverage obligation, which we believe represents an ambitious but realistic goal, we are aware that a small proportion of the population is likely to remain without coverage, even after the introduction of coverage obligations. Furthermore, this group is likely to be the same set of consumers that is affected by a lack of access to broadband and other digital technology. In seeking to avoid the creation of an excluded digital minority in rural or remote areas of the country, alternative solutions should be considered alongside coverage obligations, with a view to achieving genuinely universal coverage.

We acknowledge that the application of coverage obligations to spectrum bands will lower their value at auction. Equally, however, the importance of achieving high levels of coverage should be recognised in the context of the spectrum auctions. We would therefore support the trade-off of a guarantee of network coverage in exchange for a lower return at auction, unless a thorough cost-benefit analysis reveals that this loss potential auction revenue would be disproportionate.

Consumer Focus notes the importance of equipping Ofcom with powers to enforce the meeting of coverage obligations, as well as the clearance of relinquished spectrum, so as not to delay the deployment of new services being delivered to consumers. We believe that the new powers being conferred on Ofcom to impose financial penalties on operators who fail to meet these obligations represent an appropriate and proportionate set of incentive mechanisms. However, as outlined above, the precise nature of the coverage obligations will require further clarification before these powers can be used fairly and effectively.

Finally, Consumer Focus supports the use of wholesale access conditions to ensure that the contribution of mobile virtual network operators (MVNOs) to the competitive market is sustained during the upcoming period. The proposed merger of Orange and T-Mobile will reduce the number of domestic mobile networks for MVNOs to contract with, in addition to potentially further reducing wholesale competition by triggering a broader trend of infrastructure merging. MVNOs have typically been significant competitors and innovators in the mobile sector in recent years, and it is important that their influence on the market is maintained throughout the process of spectrum modernisation.

Consumer Focus is grateful for opportunity to engage with BIS on its proposed Direction to Ofcom and we would be happy to provide more information further to this response if required.

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Edited by: Alistair Moses

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Published: February 2010

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