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Consultation Response

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Digital Communications Infrastructure

Which? exists to make individuals as powerful as the organisations they deal with in their daily lives. We are now the largest consumer body in the UK with almost 800,000 members: we understand consumers and what makes them tick. We operate as an independent, a-political, group social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. We plough the money from our commercial ventures back into our campaigns and free advice for all.

Introduction

Good digital communications infrastructure and a strong telecommunication sector are vital for the UK. Now that consumers view mobile telephony and broadband services as essential, it is important that the UK government has appropriate strategies in place to address these needs.[1] As the telecommunications sector continues to grow in both size and importance, it is important that a strategy addresses supply and demand issues, but also what role should be played by government and regulator. As consumers continue to increase their usage of these services it is vital that these markets work well for consumers. In this response we discuss the role of government as well as some general comments on competition. We believe that certain aspects of the telecoms market are undermining the effectiveness of competition and that there is a role for DCMS in encouraging reform.

[1] Results of research into consumer views on the importance of communications services and their affordability, Ofcom, July 2014.

Role of Government

Consumers increasingly consider telecommunications to be essential and it is important that consumers have access to reliable telecoms services. We feel there is a role for Government to play in setting a strategy that will account for the growing importance of the telecoms sector and that will help deliver a world-class communications network not only for consumers, but for industry at large. The strategy should ensure there is coordination and initiation of policies: where the regulator has not acted, we encourage DCMS to address the situation and consider its role in taking forward legislative action if necessary. At the same time, there is a role that DCMS could play by working with BIS to push forward with reforms to the regulatory appeals process, which we understand has made it difficult for the regulator to act quickly at times. Ofcom's previous attempts to reform the switching regime in the telecommunications market have been subjected to lengthy regulatory appeals, leading to delay, inaction and even potentially deterring the regulator from attempting to press for similar changes while the current appeals process remains in place.

The strategy should also address barriers to private investment which result in service which is not always reliable or ubiquitous: many consumers have complained to us about a lack of service, or unreliable service quality, on their mobile or broadband connections. Industry comments usually refer to the lack of return on investment as being a hindrance to providing service to certain areas and as such it is important that this issue is addressed in any strategy going forward.

The National Infrastructure Plan[2] outlines some £14.5 billion of pipeline investment in the communications sector. We support investment in our ageing infrastructure but this investment must not be viewed in isolation and, with total investment across the regulated sectors amounting to some £151 billion in the next five years alone, it is vital that the Government continues to get a tighter grip on the massive costs that are being passed on to household bills. Despite pressure from Which?, the National Audit Office and the Public Accounts Committee, the Government has not to date made a systematic attempt to estimate the impact on consumers to see if they can afford these bills and to reassure people that all the costs are being kept under tight control.

Which? wants to see both a proper independent assessment of the costs of infrastructure investment on consumer bills and ongoing scrutiny of delivery to ensure that investments are delivered in a cost effective way for consumers. This should be delivered by an independent body sitting across the regulated sectors, working closely with the NAO and reporting yearly and alongside each National Infrastructure Plan.

Maintaining Global Competitiveness

Although the telecoms market generally works well, with price levels decreasing and technological advancements that deliver better quality services (e.g superfast broadband), some consumer issues exist. Several characteristics of the telecoms market, such as the current switching regime and tariff complexity, are hampering the ability of consumers to get the best outcomes for them.

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263159/national_infrastructure_plan_2013.pdf

For example Bill Monitor Evidence suggests a significant proportion (74%) of consumers on mobile contracts are on the wrong tariff – paying too much in relation to their actual consumption. Collectively, Bill Monitor estimated this resulted in total wastage of £6bn in 2012.[3] We believe there are a number of factors that contribute to this: switching procedures such as losing provider led switching (LPL); tariff complexity; poor sales practices; and consumer inertia driven by high search and switching costs.

Switching Processes

One important feature of well-functioning markets is the ability of consumers to switch providers easily and quickly when they desire, ideally achieving a better outcome as well. Switching promotes competition amongst retailers and helps drive innovation.

Currently, many switches rely on cease and re-provide (CR) or LPL practices whereby consumers must contact their current and new providers simultaneously to terminate their old contract and activate a new one. Unnecessary switching costs, in the form of both time and hassle, arise when consumers must spend extra time coordinating the switch.

We believe the switching processes across telecommunications markets are in need of urgent reform and we urge DCMS to include in its strategy a move to gaining provider led switching (GPL) quickly and uniformly across the entire market. GPL is standard practice across most other EU countries and the European Commission has included this reform in its proposed Connected Continent Regulation. Ofcom analysis has also concluded that it is preferable to a losing-provider-led system.[4]

Currently, competitive offers seem to be reserved for new customers or those who attempt to switch, with existing customers often losing out. Our research shows consumers who threaten to switch are usually offered preferential deals in order to stay. In a Which? home telecoms investigation almost half of people surveyed had tried to haggle for a better deal on their digital TV subscription (which usually include other home telecommunications like landline and broadband).[5] Those who did negotiate a better deal saved on average £157 a year. In a similar investigation looking at mobile phone haggling, respondents who were successful at negotiating saved on average £106 a year.[6] These sums represent significant savings – for example roughly 65% of mobile contract customers have tariff plans of less than £300 a year.[7] It also highlights the lack of value in a market that is supposed to be open and competitive.

While consumers who haggle often end up better off, the process can be annoying and time-consuming. Although many respondents said haggling was easy, a separate Which? survey revealed 35% of respondents who had contacted their mobile phone provider to ask for a deal agreed that it was a hassle to get their provider to offer a "special" deal.[8]

Retention offers made to consumers who threaten to switch are effectively subsidised by the supplier's remaining customers who pay higher prices. If consumers did not have to contact

[3] The billmonitor.com national mobile report, Bill Monitor, June 2012.
[4] Consumer Switching, Ofcom, August 2013.
[5] Which? public survey of 2,232 people, May-June 2013.
[6] Which? public survey of 765 people, September 2013.
[7] The Communications Market Report, Ofcom, August 2014.
[8] Which? public survey 2064 people, February 2014.

their existing provider before switching, there would be more incentive for suppliers to focus on retaining customers at all parts of the journey rather than the end-point. This would potentially result in better value deals for consumers, with prices harmonising across customers of the same supplier. This would also do away with the need to coordinate the switch, potentially encouraging greater consumer engagement as described below.

Sim Locking

Other unnecessary switching costs in the mobile market specifically, arise from the need for consumers to unlock their mobile sim if they wish to keep their handset and contract mobile service from a different provider. Unlocking fees vary by provider and can be up to £20. However, even where there are no unlocking fees, the time taken to receive an unlock code can be an unnecessary switching cost. Some consumers may find sim-locking complicated or time consuming and this can act as an additional barrier to switching.

In Which? research, 77% of people with a mobile phone said that it’s frustrating that phones need to be unlocked to use them on a different network.[9] Furthermore, 31% of people on a mobile contract would like to be proactively told they have the option to unlock their phone when coming to the end of their contract. While respondents did not report why they stated the above, it is reasonable to consider that for some consumers, the process of unlocking handsets causes a further hindrance in the process of switching. It may also mean that some are not confident switching to sim-only deals which work out much cheaper than contracts which include handsets.

Providers should unlock phones automatically and for free as soon as consumers reach the end of their minimum contract term. It should be noted however that if the switching regime were changed to become GPL, it would follow naturally that sims would need to be unlocked automatically by the supplier as soon as a switching request is made by the gaining provider to enable GPL to function smoothly.

Simpler Mobile Tariffs

There is an abundance of tariffs in the mobile phone market that are difficult to compare because of the way that individual service components are bundled together. The variety of tariff offers may differ depending on the handset model the consumer chooses if their contract also includes a phone. Other features that are not included in the main bundle such as long distance or roaming calls pose a further complexity for consumers to compare across the market.

Proper comparison is further complicated by the fact that important information such as variation to price or traffic management policies are often hidden away in the terms and conditions rather than clearly disclosed upfront.

Our research shows that one in five (17%) roll over their contract when the term ends, meaning they could be missing out on upgrading their handset or reducing their monthly bill by moving to a SIM only deal.[10] Three-quarters (74%) of people who have come to the end of

[9] Which? public survey 2064 people, February 2014.

[10] Which? public survey 2064 people, February 2014.

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their contract in the last five years say their main aim was to save money, or get a better value tariff. Yet 22% of people aren't sure if it is possible to move to a SIM only deal, and only 9% were informed of this option by their provider. Providers should give customers a breakdown of their usage and details of the plan that provides the best value against their consumption. Where appropriate this should include detail of "add on's" that the consumer could activate for elements outside the core monthly price (e.g. a long distance package if the consumer regularly makes long distance calls). Additionally, providers should proactively contact all customers before their minimum contract ends, and provide them with details of all available options to best match their needs.

Finally, mobile handset charges should be separated from all service charges, such as calls, texts and data charges, and the handset costs should be automatically dropped once paid off. This would ensure consumers are not overpaying once they come to the end of their minimum term and would also make it easier for consumers to compare prices. The majority (85%) of mobile contract consumers have a handset bundled into their pay monthly service charge making it difficult to understand the unit price for calls, texts and data.[11]

Consumer Engagement

The factors contributing to consumer confusion and hassle come together to create a further impediment to consumer switching: the perceived complexity of switching may deter consumers from engaging to their full potential. It is well known from behavioural research that the more information a consumer has to take into account when making a decision, the more heuristics (rules of thumb) and behavioural biases come into play, and therefore the less predictable or less 'rational' in traditional economic thinking individual decision-making becomes.[12] In particular, when faced with complex choices, people tend to operate under 'bounded attention' in which they select some information to pay attention to and ignore other bits of information.[13] Which information is given importance in decision-making is not necessarily the most rationally important but depends on a number of heuristics and biases that affect the way that people approach decisions. Essentially, excessive or complex product information can 'freeze' consumers' decision-making, so they end up deferring a decision or basing their choice on incorrect or less relevant information.[14] We are currently conducting qualitative research into the consumer switching journey in the mobile market and will share further insight from our findings when they become available.

We welcome this consultation and look forward to further discussions on the role DCMS has to play in this sector. The announcement of the Telecoms Communications Action Plan was a step in the right direction, however we have been disappointed with its lack of progress. More could be done in working with industry and the regulator to deliver positive outcomes for consumers. Indeed we would welcome an invitation to this forum to ensure that the consumer perspective is being considered in policy making and to encourage other issues to be adopted.

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[11] Ofcom Technology Tracker Wave 2 2013. 2315 respondents, July 2013.

[12] See for example, B Schwartz (2004) The Paradox of Choice - Why More is Less, New York: Harper Collins,

[13] G Loewenstein, C Sunstein & R Golman (2013) 'Disclosure: Psychology Changes Everything' Regulatory Policy Program Working Paper, RPP-2013-20. Cambridge, MA: Mossavar-Rahmani Center for Business and Government, Harvard Kennedy School, Harvard University

[14] CGAP, Applying Behavioural Insights to Consumer Protection policy