Call for Information
Digital Markets Taskforce

Telecom2 Ltd Response

About Telecom2

Telecom2 are primarily a voice network carrier with offices in London and Spain using both of the main transmission technologies, TDM and, increasingly, IP. Through the group of companies our focus is to be at the forefront of technology, specialising in VoIP B2B and call centre solutions. T2 also specialise in micro payments across mobile, card services and age verification.

Telecom2 has a broad spectrum of clients including a number of Contact Centres, Print media companies, Charities, TV companies and a Premiership Football club.

We also still have some of the traditional clients on 09 AND 08 PRS running service such as Adult, Psychic and Competitions.

We welcome this opportunity to respond to the call for information. Our comments are based on internal knowledge and discussions with clients.

We have restricted our comment to questions where we have informed knowledge and wish to also bring the CMA's attention to an aspect of competition that will have a direct bearing on this area.

As with many other phone service providers we have retail and wholesale customers and this gives us a wide view of the market.

ACCESS TO THE INTERNET AND OTHER SERVICES

Almost all users of the internet access the internet through their phone service provider. The industry is awash with anti-competitive behaviour this impacts directly and indirectly on consumers, sometimes resulting in high charges, with consequent bill shock, and sometimes threatening services and the consumer's access to the internet. In extreme cases companies have been forced out of business. Details of some of the behaviours are below.

We would point out that this is a complex area and we have given only a top level summary of the behaviours. There are others but those below have the most impact. It does seem sometimes that having SMP gives you carte blanche to ignore regulation and agreements. We would be happy to give more information and clarity on these and other issues.

ACCESS CHARGES

In July 2015, following complaints about the high rates charged by mobile operators for calls to premium rate services, retail charges for calls to premium rate numbers were unbundled by OFCOM

into two components. The service charge paid to the service provider, this was capped according to number range; and the Access charge levied on callers by their Phone Service Provider for making the calls, this wasn't capped in the belief that competition would drive the charge down. The Phone Service providers have SMP over their retail customers who have no choice but to pay the charge. Competition had no effect on the access charges except to drive them up. The access charges levied in particular by the mobile Operators are grossly inflated and in excess of many of the service charges. There is no credible excuse for high access charges, which should really be only one or two pence per minute in order to cover costs and make a profit.

CHARGES FOR CALLS TO OTHER NON GEOGRAPHIC NUMBERS

Again in response to complaints about high retail call charges raised largely by the mobile operators where they had SMP, OFCOM reduced and capped the rates paid to providers of personal number services in the expectation that retail rates would follow. This happened in many cases but the reduction was not in proportion to the drop in the rates paid to service providers and retail charges remained higher than they should have been. Another reason for capping the rates was an alleged high level of fraud. This was largely based on allegations by BT, who had an interest in promoting the view that high levels of fraud existed. OFCOM accepted these allegations despite their being contrary to OFCOM's own research and data. This had the effect of reducing the number of services provided as the capping made them uneconomic. It also affected many people's physical safety as they had relied on these services to give them a level of anonymity and protection from abuse and hate crimes. OFCOM's solution to this simply wasn't workable.

INTERCONNECT

The worst examples of anti-competitive behaviour have been in the wholesale or Interconnect area. Put simply, if a consumer makes a call to a number that isn't allocated to their own phone service provider the call will be sent to a transit provider who will then route the call to the communications provider the dialled number has been allocated to and who will in turn route the call to their customer, who may be a person or a business, including service providers. This process is called interconnect and is governed by a common set of terms and conditions applicable to all phone companies in the UK, known as the Standard Interconnect Agreement, SIA. The main Transit Provider is BT who, with approximately 95% of the market, have SMP.

INTERCONNECT CHARGES

There are several categories of charges made for interconnection. These were regulated but from July 2015 they were deregulated and responsibility for paying them for Premium Rate services passed from the consumers phone service provider to the Service provider's network provider. OFCOM's expectation was that there would be no significant increase in the charges. The charges were in fact subject to massive increases and a new charging structure was introduced. These charges are eventually passed onto consumers in the form of higher prices for services or where the cap has been reached services may be withdrawn.

WITHHOLDING PAYMENTS

There are two contractual processes whereby payments may be withheld, Billing Disputes and Artificial Inflation of Traffic, AIT. AIT is where calls to Premium Rate services that are not in commercial good faith are made. Both processes depend on good faith operation, one party makes a case under the appropriate process, discussions take place and the case is settled based on the evidence. The AIT process has set timescales and if a claim isn't settled and hasn't progressed to

legal action or ADR within just under a year of it being raised then it is deemed resolved in favour of the party that raised the case and they are entitled to permanently retain to funds. They are not compelled to return the money to the consumers who made the calls that were the subject of the claim and we know of only one instance where this was done.

It is easy to make spurious claims in order to withhold payment, the evidence is often weak and based on opinions not facts. It is then easy to maintain discussions until the case is time barred and the party that made the claim retains the funds. It is possible to delay this by entering into ADR but this requires the agreement of all parties and has not as far as we are aware ever been done. Legal action can be entered into but if money has been withheld and there are inadequate reserves of cash then it is unaffordable. Often, settlements are reached whereby some money is paid but a significant amount is retained. Legal action almost always results in a settlement. There was a case where money was withheld without the use of any process and it was only when legal action was well under way that a settlement for part payment was reached. ADR is available but the providers who raise cases have refused to enter into ADR when requested.

In the worst case, BT acting as the transit operator withheld all money due for certain services from a number of network providers without any reason or evidence, requiring the Network Providers to prove that each and every number was providing a genuine service. This was an impossible task, millions of numbers were involved and millions of pounds were withheld, possibly tens of millions. Some companies went out of business, some reached a settlement and some took legal action, in the latter case BT drew the process out in the hope that the claimant would give up, when this didn't happen they settled but were still able to hold on to significant amounts of money. Under the SIA BT should have informed the consumers phone service providers and passed the money back to them but never did.

There seem to be two main reasons for this action. One is to assist cash flow, the other to mitigate the costs of including some 08 numbers in bundles, rather than apply acceptable use policies to their consumers they just don't pay for the calls.

This results in uncertainty as to whether a service will be viable, less services being provided, higher costs to the consumer and is a barrier to entry into the market. The problem is well known, even overseas, and businesses that operate perfectly well in other countries will not come into the UK market, depriving consumers of choice.

IP

The transition to IP telephony should have progressed much further by now but a major barrier to Phone companies taking IP is the BT IPX agreement. Where appropriate much of it mirrors the SIA but it is unregulated and contains some clauses that create uncertainty and are seen as dangerous by many CPs

BT has the right to terminate an agreement on thirty days notice without having a reason. They are known to have done this where a phone company stood up to them. This would place consumers phone service and access to the internet in serious jeopardy, there is no process for handing over consumers to another provider and there may not be time to do so if there is a large number of them.

BT have the right to make changes, without consultation, to the process for withholding money.

BT have the right to terminate an agreement without notice if they suspect AIT, i.e. without proof

There is no formal industry contract review process as there is with the SIA, no industry oversight.

REMEDIES

It is possible to make formal competition complaints but there are barriers to doing so.

- One is the cost of making a complaint. The requirements of a formal complaint are very strict and in order to even have a complaint accepted it is necessary to have the complaint drafted by a regulatory specialist, normally a Lawyer.

- Another barrier is the very real and justified fear of retaliation. The providers engaging in anti-competitive behaviour are normally large companies with the ability to damage the smaller companies. This can take the form of, for example, withholding money due to the complainant or blocking their consumers access to services provided by the complainant. In the case of IPX the agreement can simply be terminated on thirty days notice.

- The third barrier is ignorance. Many companies are not aware that they can make competition complaints and consumers may not even realise they are the object of anti-competitive behaviour.

Appendix A – Questions for input and evidence

Scope of a new approach

1. What are the appropriate criteria to use when assessing whether a firm has Strategic Market Status (SMS) and why? In particular:

   • Which, if any, existing or proposed legal and regulatory regimes, such as the significant market power regime in telecoms,58 could be used as a starting point for these criteria?

   The SMP regime would be a good starting point. It has been in use for a number of years ad used correctly can be a good way of ensuring competition

   • What evidence could be used when assessing whether the criteria have been met?

   The amount of bandwith allocated to a provider and the number of connected consumers

2. What implications should follow when a firm is designated as having SMS? For example:

• Should a SMS designation enable remedies beyond a code of conduct to be deployed?

A code of conduct on its own is not adequate to ensure compliance. As industry has experienced, assurances and codes are only valid as long as it is convenient to comply with them. There has to be strong sanctioning powers that need to be used to deter anti-competitive behaviour

• Should SMS status apply to the corporate group as a whole?

No. Many corporate groups will include companies that are not connected to the provision of internet or services, there would be no value in including them in the SMS statues

• Should the implications of SMS status be confined to a subset of a firm's activities (in line with the market study's recommendation regarding core and adjacent markets)?

Yes, SMS status should only apply to relevant activities.

3. What should be the scope of a new pro-competition approach, in terms of the activities covered? In particular:

   We have no view on this

4. What future developments in digital technology or markets are most relevant for the Taskforce's work? Can you provide evidence as to the possible implications of the COVID-19 pandemic for digital markets both in the short and long term?

The Covid-19 pandemic has encouraged people and companies to make much more use of the internet and this will encourage faster take up of on line services if the capacity is available. There are developments in messaging and payment services that will facilitate this take up

Notes
58 See Ofcom, Significant Market Power, February 2016. We are also interested in views on the proposals made by Australia, Germany and the Benelux countries or the proposals made by the European Commission.

<u>Remedies for addressing harm</u>

5. What are the anti-competitive effects that can arise from the exercise of market power by digital platforms, in particular those platforms not considered by the market study?

   As we have seen already in the telecoms industry, consumers can suffer loss of services, increased charges and restricted access to the internet. True innovation is normally generated by smaller companies, if these are pushed out then this too will have a detrimental effect on the services available to consumers.

6. In relation to the code of conduct:

• Would a code structure like that proposed by the market study incorporating high-level objectives, principles and supporting guidance work well across other digital markets?

Any code structure will only be successful if it is appropriate to the market it covers, backed up by sanctions strong enough to deter anti-competitive behaviour and a regulator willing to apply those sanctions on a fair and equal basis using hard evidence

• To what extent would the proposals for a code of conduct put forward by the market study, based on the objectives of 'Fair trading', 'Open choices' and 'Trust and transparency', be able to tackle these effects? How, if at all, would they need to differ and why?

We have no view on this

7. Should there be heightened scrutiny of acquisitions by SMS firms through a separate merger control regime? What should be the jurisdictional and substantive components of such a regime?

We have no view on this

8. What remedies are required to address the sources of market power held by digital platforms?

• What are the most beneficial uses to which remedies involving data access and data interoperability could be put in digital markets? How do we ensure these remedies can effectively promote competition whilst respecting data protection and privacy rights?

We have no view on this

• Should remedies such as structural intervention be available as part of a new pro-competition approach? Under what circumstances should they be considered?

We have no view on this

9. Are tools required to tackle competition problems which relate to a wider group of platforms, including those that have not been found to have SMS?

• Should a pro-competition regime enable pre-emptive action (for example where there is a risk of the market tipping)?

Given the potential impact of anti-competitive behaviour, pre-emptive action may be required in order to prevent the behaviour and manage its effects

• What measures, if any, are needed to address information asymmetries and imbalances of power between businesses (such as third-party sellers on marketplaces and providers of apps) and platforms?

We have no view on this

• What measures, if any, are needed to enable consumers to exert more control over use of their data?

The main requirement for consumers to exert control is education, if consumers are ignorant as to what control they have and why they won't exert it

• What role (if any) is there for open or common standards or interoperability to promote competition and innovation across digital markets? In which markets or types of markets? What form should these take?
We have no view on this

Procedure and structure of a new pro-competition approach

10. Are the proposed key characteristics of speed, flexibility, clarity and legal certainty the right ones for a new approach to deliver effective outcomes?

There is a lack of all of these in current regulation of the Premium Rate market, this is damaging the market and becoming a barrier to entry so yes.

11. What factors should the Taskforce consider when assessing the detailed design of the procedural framework – both for designating firms and for imposing a code of conduct and any other remedies – including timeframes and frequency of review, evidentiary thresholds, rights of appeal etc.?

Our experience is that the main requirement is clarity, enabling consumers and providers to understand it without having to seek legal advice. Reviews need to take place as and when developments in the market or technology require them. In any regulated activity there is a need for a truly independent appeals procedure with people from industry, typical consumers and people with legal knowledge sitting on any appeal board

12. What are the key areas of interaction between any new pro-competitive approach and existing and proposed regulatory regimes (such as online harms, data protection and privacy); and how can we best ensure complementarity (both at the initial design and implementation stage, and in the longer term)?

We have no view on this