Internet Telephony Services Providers' Association

ITSPA response to Ofcom's consultation surrounding porting charges under General Condition 18

About ITSPA

The Internet Telephony Services Providers' Association (ITSPA) is the UK VoIP industry's trade body, representing over 70 UK businesses involved with the supply of VoIP and Unified Communication services to industry and residential customers within the UK. ITSPA pays close attention to the development of VoIP regulatory frameworks on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within international markets.

Please note that certain aspects of the ITSPA response may not necessarily be supported by all ITSPA members. Individual members may respond separately to this consultation where a position differs.

A full list of ITSPA members can be found at http://www.itspa.org.uk/

Summary

ITSPA fully supports the proposals from the Office of Communications ("Ofcom") on revised guidance for the level of porting charges under GC 18. Our members have been under acute pressure in their termination businesses since the implementation of Ofcom's Statement surrounding the 2013 Wholesale Narrowband Market Review ("WNBMR"). Discounting the remote possibility that a Terminating Communications Provider would pass the "3-stage test" in Ofcom's April 2011 Statement "Fair and Reasonable Charges for fixed geographic call termination"[1], our members are paying the Original Range Holder more for the conveyance of a ported call from the switch hosting the range in question to the Recipient Communications Provider than it can charge for the termination of the call.

This creates a substantial competitive distortion, in favour of both the incumbent operator (in respective jurisdictions) and other large Communications Providers (CPs) in the market due to their historical market

[1] http://stakeholders.ofcom.org.uk/binaries/consultations/778516/statement/fair-reasonable-statement.pdf

share and because the majority of competition in the telecommunications market is for the provision of service to existing customers. This competitive distortion is further compounded by our members generally being relatively new market entrants, competing in the market for next generation technology and Ofcom's own policy preference to encourage portability over new number allocations to preserve stocks. We are heartened that Ofcom have focussed heavily on the need for effective competition in reaching its conclusions.

By matching the economic models for donor conveyance to that of termination (i.e. Long Run Incremental Cost), these competitive distortions subside. Incidentally, we would also say that the matching of technology, i.e. neither time-division multiplexing nor next generation/internet protocol also avoids further distortions in the future, however, there needs to be a serious debate within the industry, led by Ofcom, on what the incentives for the direct routeing of ported calls should be. The obvious such incentive would be a shift to next generation networks being the benchmark, for example, however, it is likely that other levers may exist to expedite this. No such debate has been had since the Competition Appeal Tribunal overturned the Statement on portability in September 2008[2] which is far too long in our members' opinion. The number porting process is in serious need of modernisation to reflect the market that exists today. A number of our members who have worked on potential industry solutions since 2008 would be willing to discuss the requirements with Ofcom in order to bring the UK porting system up to comparable international standards.

Whilst we do support Ofcom's conclusions, we would say, however, that the Consultation is silent on the proposed effective date of the guidance. It is important to note that many of the adverse consequences which it analyses commenced on 1st January 2014 with the WNBMR; it is therefore our considered opinion that the effective date of the proposed guidance in the Consultation has to match that. Anything else amounts to the aforementioned reward to the former incumbent at the expense of emerging markets within the sector.

Finally, we would respectfully submit that this is another opportunity that Ofcom could use to address some of the failures in the market for number portability, notably the difficulty that our members have in establishing portability with Original Range Holders (and/or their hosting networks) at the request of Subscribers that which to switch, a right which they have clearly enshrined in European Law. Games

[2] http://www.catribunal.org.uk/239-2244/Judgment.html

played by ORHs in impeding the establishment of portability are anti-competitive and furthermore, we would say, extremely dubious from a Competition Act 1998 perspective given their monopoly position as a terminator of calls of those numbers established by Ofcom in 2009 and 2013 with Significant Market Power conditions[3]. It is this "game playing" that means our members have less faith in the power of Ofcom guidance on GC18 being respected by the operators that engage in such practices; to that end we would prefer a Direction to be issued, affording the fixed sector the same regulatory certainty as the mobile sector enjoys. This same concern applies to the inability (technical and otherwise) of BT's IP Exchange platform performing number portability in some circumstances – the "so-called" Scenario 7 being pursued by the Office of the Telecommunications Adjudicator's Number Portability Process and Commercial Group. There is concern around the length of time being taken to resolve this issue.

ITSPA members are of course willing to discuss these issues in further detail as and when is required.

[3] 2009 Wholesale Narrowband Market Review, Schedule 1 of Annexes 7 and 13 (as later enacted) and Schedules 1 and 3 to Annex 1 of the 2013 Wholesale Narrowband Market Review