Ofcom Consultation: Business messaging – Review of the A2P SMS termination market

About CCUK

1. Comms Council UK is a membership-led organisation that both represents and supports telecommunications companies that provide services to business and residential customers in the UK. We keep Britain talking in its various guises by providing or reselling voice services over data networks (VoIP) as well as other "over the top" applications including instant messaging and video.

2. The membership is a mixture of network operators, service providers, resellers, suppliers and consultants involved in a sector that is diversifying rapidly. CCUK represents its members at a policy level, builds coalitions to collaborate on industry initiatives and provides a platform to help members prepare for change, learn about new trends and develop new business relationships.

3. CCUK welcomes the opportunity to respond to Ofcom's review of the A2P SMS termination market.

4. Overall, we are supportive of the proposals outlined by Ofcom in this consultation. Our members welcome additional intervention and scrutiny in a market which has, for some time, suffered from the consequences of the issues identified in the market power assessment. To that end, we support the finding of Significant Market Power ("SMP") and proposed remedies, subject to the below response.

5. However, we also welcome this opportunity to raise some particular issue with the assessment and highlight areas which could benefit from further consideration from Ofcom.

6. The position and views in this response have been developed based on input from CCUK members; we trust that our submission is useful and we remain at your disposal to answer any questions arising.

Response

7. We note that the Consultation is aimed only at regulating A2P SMS to telephone numbers designated as a Mobile Service in the National Telephone Numbering Plan (on the basis of the draft SMP Condition annexed to the Consultation). However, we would like to raise two particular issues with this assessment.

8. Firstly, Ofcom encourages using Personal Numbers (+4470) as substitutes for Mobile Service numbers. However, there is no condition requiring Personal Numbers to be treated as the equivalent of Mobile Services in retail bundles. This causes market confusion and competitive disadvantages for new entrants compared to established MNOs with ample stocks of Mobile Service numbers. Differential charges for A2P SMS could worsen barriers to entry, which seems counterintuitive.

9. We, therefore, urge Ofcom to ensure that +4470 numbers are treated the same for an A2P SMS when compared to +447x (save for +4476, although the same logic applies to radio paging) to address this issue.

10. Secondly, SMS services exist on other number ranges, including the geographic number-based termination services offered by AQL, BT, and maybe a couple of others. The same issue applies here; it is unclear as to why a Mobile Service range holder has a monopoly for receiving an A2P SMS, but the range holder of a geographic number, Personal Number, and so on, does not for the same A2P SMS.

11. For some time, our members have attempted to innovate with SMS, and to have their non-Mobile Service ranges included in the relevant routeing regimes of the SMS industry. These efforts have been unsuccessful; given that BT and AQL operated a service for some time, this suggests a competitive distortion, worthy of further Ofcom investigation.

12. We are concerned that, despite SMS services operating on geographic numbers, this is not considered in the Consultation. Given that some in the telecoms/VoIP industry often refer unwanted decisions to the Competition Appeal Tribunal, we recommend that Ofcom appraise the need to extend the proposed regulation to other number ranges, to lessen avenues of attack in the courts.

13. Fundamentally, we view SMS simply as a signalling protocol and cannot see why the S and A digits of a telephone number are relevant in determining whether a range holder has a monopoly in receiving an SMS to it – by definition, they are a monopoly, in all cases.

14. Separately, we also note that Ofcom considers various over-the-top applications to be a competitive constraint or substitute for SMS. This is not the case in reality, and nor should it be considered as such from a regulatory economics perspective.

15. UK MNOs are obliged to provide a form of SMS access to the emergency services, whereas, it would appear, an RCS provider is not. For a vulnerable person relying on this, there is clearly no substitution possible. This alone should be sufficient to render the relevance of RCS as a substitute moot, but going further, RCS are often closed ecosystems, characterised by a monopoly in both the origination and termination of messages within the ecosystem, with little or no interoperability.

16. SMS, on the other hand, is a universal and ubiquitous protocol, with end users able to change providers at the originating end and still enjoy the full benefits of the service by taking their number with them.

17. These fundamental structural differences between the services, and the lack of "real-world" substitutability in practice, would suggest that the monopolies identified by Ofcom are more acute than it may otherwise appear.

18. Some CCUK members also consider that this Consultation itself may incentivise some terminating operators to engage in detrimental behaviours to maximise short-term profitability before any SMP conditions come into effect. While this would, of course, prove Ofcom's point about the risks of monopolistic behaviour in the market, we trust that the regulator will monitor the situation, and will be prepared to use its emergency powers, should the need arise.

19. Finally, we understand that the comparative magnitude of A2P versus P2P volumes gives Ofcom's work on A2P a greater sense of urgency. However, we are also unclear as to how 160 characters originated by a mobile device warrants any different treatment in terms of remedies when precisely the exact string of characters is originated by software.[1]

20. The only difference is in terms of the origination cost (being an API versus the use of spectrum or other means to connect a handset to the MNO core), which is outside of the relevant market.

21. Issues such as the artificial distinction between A2P and P2P, the issue around non-Mobile Service numbers and the oligopolistic appearances of that market, all suggest that there is more work to be done in SMS than the Consultation achieves.

22. We trust that Ofcom will continue to monitor and intervene in the market as needed, and are at your disposal to discuss matters arising.

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[1] Although we note, strictly, all SMS is sent by software, given the handset's operating system converts inputs to the SMS protocol – the definition used in the SMP condition itself technically covers all SMS, not just what we would consider to be A2P as a result.