

**Hutchison Whampoa (Europe) Limited**

Contact John Blakemore, Senior Representative European Affairs 3G Europe  
Hutchison Europe Brussels Branch  
Square de Meeus 35  
1000 Brussels  
T: + 32 2 509 0074



3 Group's response to  
the Commission's consultation on Content Online in the  
Single Market

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## Introduction

This paper sets out the response of the 3 Group (“the 3 Group”) businesses in Europe to the Commission’s consultation on ‘Content Online in the Single Market’.

The 3 Group is part of Hutchison Whampoa Limited's (HWL’s) telecoms division, and operates under the ‘three’ brand in the following EU Member States: Austria, Denmark, Ireland, Italy, Sweden and the UK. The HWL telecoms division, comprising the 3 Group and Hutchison Telecommunications International, is the first global 3G operator, with 3G licenses in 10 countries<sup>1</sup>. Our 3G services were first rolled out in March 2003. The HWL Group had more than 13.5 million 3G customers globally and 11.5 million in Europe as of 23 August 2006. The 3 Group is one of the fastest growing telecoms businesses in Europe.

## Summary

The 3 Group is at the forefront of mobile content services. Whether mobile TV, Instant messaging or Skype calls, the 3 Group is aiming to offer a much greater range of content services for its mobile customers. Whilst there are still difficulties in developing content services, most of these will be resolved in the market. There are, however, some problems that require the intervention of regulators.

- A key barrier to creating a single market for mobile content services is the **excessive wholesale data roaming charges levied by many mobile operators**. The wholesale charges are so high as to effectively prevent the emergence of content services for customers whilst roaming.
- A key requirement for promoting a single market in content services is to have the services available seamlessly across borders. This requires **harmonisation of legislation, technologies and spectrum**. This harmonisation is also important to create a sufficiently large market to secure the success of European technologies, services and content.
- **Cross border licensing of content remains difficult and expensive**. Much easier and less expensive approaches to cross border licensing are required if content services are to be made available throughout the EU.
- There remains the threat that **valuable content for mobiles will be monopolised as has happened with other distribution channels**. This would have serious adverse consequences for the development of mobile content services.

## Types of content online

The 3 Group first launched its 3G networks in 2003. As a 3G only operator, the 3 Group is committed to developing new content services that take advantage of the much greater ability of

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<sup>1</sup> As well as the 6 EU Member States listed above, HWL has 3G licences in Australia, Hong Kong, Israel, and Norway.

3G networks to carry data compared to the older 2G networks. This has meant that the 3 Group is in the lead in developing new content services.

Initially, mobile content was mainly in the form of 'personalisation': ring tones and screen savers. Games also proved a popular genre. With the launch of 3G networks the scope for mobile content has increased. The 3 Group offers a wide range of content. For example:

- Recasting established broadcast television channels, such as the ORF channels in Austria. This can be either using the 3G network, or, in the case of 3 Italy, over a DVB-H network. It also includes highlights of sporting events or music concerts.
- The 3 Group offers online magazines, where the mobile customer subscribes to receive regular updates.
- User generated content is proving to be an increasingly popular service. 3 UK's "SeeMeTV" allows users to upload a video recorded on the mobile handset's camera. The user then earns money every time the video is watched.
- The popularity of 3's full length music download service means that it is second only to Apple's i-tunes in some Member States (the UK for example). It has also led to some artists choosing to release their music videos on 3's networks before they are released on television.

As well as these content services, the 3 Group is working to make 'mobile broadband' a reality. This is not just about download speeds, it is also about making the users' experience similar to that which they are familiar with on the fixed Internet. The 3 Group has agreements with Yahoo! and MSN to put their e-mail, Instant Messaging and search services on 3 handsets in a format that is familiar to customers. The 3 Group is also making Skype available on its handsets so that customers will be able to make VoIP calls as they would at home.

As well as offering attractive content, it will be necessary to get the pricing right. The 3 Group believes that the pricing of mobile content services will become increasingly like that seen elsewhere – whether for pay-TV or the fixed Internet. Users will pay for a package of basic services, for which there will be no usage charges, and then there will be premium services that attract additional charges. For example, 3 Sweden offers two different mobile broadband packages: '3Mobilt Bredband 1GB' costs 199 SKr per month (about €20) and includes 1 GB of data each month; whilst '2Mobilt Bredband Obergränsat' costs 499 Skr per month (about €50) and has unlimited data usage.

### **Consumption, creation and diversity of online content**

The 3 Group launched its services in Europe in 2003 and in that time has seen demand for mobile content services grow. 3's customers are typically high users of content services. By offering a wide range of content services, the 3 Group is able to appeal to customers with differing tastes. An obvious benefit of online services generally, as compared to traditional means of distributing content, is that it is relatively inexpensive to offer services that might only have a niche demand. In this way, cultural diversity is fostered online. For example, there is evidence to show that ethnic minorities use the Internet more because it provides specific content for them. Also with the

emergence of user generated content, cultural and linguistic diversity is further enhanced in the online environment. As an example, 3 UK offers “Indian” content on its network.

### **Cross border content services**

The 3 Group has identified **two main barriers to cross-border content**. The first is the excessively **high wholesale data roaming rates**. A typical wholesale data roaming charge might be around €10 per MB. Since a single music track is about 2 MB, at typical wholesale rates this would cost around €20 to download, before tax and any retail mark-up. In effect, it is not possible to offer commercially attractive cross-border content services. Indeed, the 3 Group has blocked access to some services whilst roaming because of the bad customer experience

The second barrier to cross-border content is relevant to content that contains intellectual property rights, and that is the **availability of rights**. The process for obtaining multi-territory rights to show films or sports events, for example, or to play songs is too difficult and expensive to make for a viable business case. Rights are currently sold for a single country and obtaining multi-territory rights is both difficult and expensive.

### **Competitiveness of European online content industry**

As far as mobile services and mobile content services are concerned, Europe has until recently been a global leader. This is largely because of the support the Commission gave to the GSM standard. This single Europe standard went on to become the global standard with currently in excess of 2 billion users worldwide. European industry and the European economy in general has benefited hugely from this.

However, Europe is now falling behind, especially relative to the Far East. Just as there was with GSM, there is now a need to promote a large single European market. This means promoting a single interoperable technology with harmonised spectrum and harmonised rules. In this response the 3 Group has identified the barriers it sees to cross-border services. Whilst these barriers remain, Europe is at risk of falling further behind.

### **Licensing, rights clearance, right holders remuneration**

Licensing remains, at times, a hindrance to offering content services. It can be difficult to obtain valuable content. Not all content providers are willing to allow their content on mobile devices. Sometimes the lack of rights is cited as a problem. Television broadcasters may have the right to broadcast films, but they often will not have the mobile rights. This can lead to certain programmes being ‘blacked-out’.

Collecting societies continue to present problems. The monopoly position that they hold means they can be inflexible, which is a problem when mobile operators are trying to develop new services and are experimenting with content and payment mechanisms. The solution is to end the monopoly position of collecting societies and to introduce greater transparency into their activities. The 3 Group supports the Commission’s efforts to introduce greater transparency into collecting societies, notably the 2005 Recommendation on cross-border licensing.

A further area of concern is that **valuable mobile content may become monopolised** as has happened with other distribution channels, notably pay TV. The Commission's sports sector inquiry was welcome and timely, but the 3 Group remains concerned that mobile sports rights in particular are being concentrated in a few hands, with the risk that this will lead to the content being used in an exclusionary or exploitative (monopoly pricing) manner.

As regards rights holders remuneration, the 3 Group recognises the importance of **proper compensation for rights holders and prevention of unauthorised distribution**. In a converging market for digital content the 3 Group believes that efficient Digital Rights Management (DRM) systems which allow customers to pay only for the digital content they wish to use and which allow rights holders to be correctly remunerated for that content are the way forward. The 3 Group believes that systems of copyright levies operated by a number of EU Member States are increasingly outdated and not suited to the online digital environment. The copyright levy system requires customers purchasing recording devices and other hardware to pay the levy, whether or not they actually use that equipment to make copies of content. The 3 Group opposes any additional imposition of levies on the purchase of mobile handsets. This would increase the price of mobile handsets and raise customers' costs of access to online content.

### **Legal or regulatory barriers**

The EU is not yet a single harmonised market for content services. Whilst cultural and linguistic differences play a part, the regulatory environment is also not yet sufficiently harmonised to support seamless cross-border services. This requires **harmonisation of legislation, technologies and spectrum**. This harmonisation is also important to create a sufficiently large market to secure the success of European technologies, services and content. The Commission is currently reviewing the management of spectrum. Whilst market mechanisms have a role to play, the Commission needs to consider to what extent it is prepared to see 25 fragmented markets or whether there are steps it could take to ensure a degree of harmonisation. It is notable that for mobile TV spectrum the Commission has identified a need for interoperable technologies and some harmonised spectrum to be made available. Mobile TV is not the only service that requires harmonisation to function across borders. 3G mobile telephony is not yet sufficiently established, especially in the new Member States, to assume that a pure market-based approach without some minimum guarantee of harmonised spectrum will allow it to become a means of offering seamless cross-border content services.

Of course, in the case of Mobile TV, technological solutions have already been deployed in some Member States, such as DVB-H by 3 Italy. The Commission should be careful to avoid taking actions that undermines these existing services, since consumers are already benefiting from them and such actions would be detrimental to the Commission's aim of promoting mobile TV. Therefore, the Commission should look to solutions to mobile TV that take account of existing services and technologies.

As noted above, the 3 Group believes that market mechanisms have a role to play and any future management or allocation of spectrum should be done in such way that there are no unnecessary

restrictions in licences to free up spectrum for new multimedia services, whilst ensuring that appropriate regulation is maintained to minimise interference.

## **Networks**

The success of the Internet has been built on the principle of net neutrality and we see no reason why this should not continue to be the case in the new environment of convergence. The 3 Group deploys the principle of net neutrality on its network. For example the 3 Group's customers are offered the opportunity to make high quality Skype calls over the network without extra charges or different pricing applying to them. Piracy and unauthorised uploading and downloading of copyright protected works

### **Piracy and unauthorised uploading and downloading of copyright protected works**

The 3 Group opposes to piracy and unauthorised uploading and downloading of copyright protected works. In addition with complying with the law and contractual obligations, the 3 Group does everything in its competences to address the concerns of copyright holders and content providers. The current EU legal framework, notably the e-commerce Directive and the Directive on IPR enforcement are adequate safeguards of copyright infringement. The 3 Group is committed to its responsibilities under this framework and respects rights holders interests. Piracy is not a widespread problem on mobile networks. The key differences compared to the fixed Internet are (i) that mobile operators and content owners were quicker to make available legal content, thus satisfying the demand that might otherwise have sought illegal content; and (ii) mobile content is protected by digital rights management systems. The 3 Group believes that the combination of these two factors, will ensure piracy does not become a major problem on mobile networks. Unless there is clear evidence to the contrary, this is not an area that needs the attention of policy makers.

### **Digital Rights Management systems (DRMs)**

The 3 Group supports the development and deployment of DRM systems. DRM systems are deployed to offer a high level of protection to rights holders against unauthorised distribution of their copyright protected content and to enable them to offer controlled right access. DRM systems prevent unlicensed copying and allow customers to consume on demand the content they download. The 3 Group uses the OMA DRM version 1 system as well as its own proprietary CFM system. Currently the industry is working on developing a standard DRM system. This was initially thought to be the OMA DRM v2, but satisfactory licensing terms are proving difficult to agree and so mobile operators are looking at alternative DRM systems, such as Windows Media DRM.

The more advanced DRM systems being developed for use on mobile devices offer greater protection for content. They also offer much more flexibility over the way content is distributed. For example, they allow superdistribution (that is, peer-to-peer distribution) of copyright protected content. This greater flexibility will enable a wide range of new business models, such as content that the user can play a limited number of times or that expires after 1 or 2 weeks.

The 3 Group believes that DRM systems are the way forward for copyright protection. They offer flexibility and choice to the consumer. Their more and more widespread deployment by different

platforms makes them increasingly user friendly and adequate and effective tools in the fight against piracy. We urge the Commission to foster and protect DRM systems.

### **Complementing commercial offers with non-commercial services**

The 3 Group sees an important role for non-commercial content in introducing consumers to the services that are available and allowing them to explore and experiment. 3 Austria, for example, provides free streaming of public television channels to its 3G mobile devices. Of course, this needs the agreement of content owners, which is not always forthcoming.

Under the Electronic Communications Regulatory Framework (Article 31 Universal Service Directive), networks are subject to the must-carry obligation where a '*significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts*'. The 3 Group believes that a significant number of end-users will use their mobile device to receive radio and television broadcasts, and therefore the obligation should be extended to mobile networks. 3 Austria, for example, has a must carry obligation.