

UNITED KINGDOM

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INTRODUCTION

In 2007, the electronic communications sector in the United Kingdom saw continuing robust retail price competition. There was strong progress in local loop unbundling, which in turn had an impact on the take-up of wholesale line rental and the use of carrier pre-selection. The fixed incumbent started the roll-out of next generation access networks in new residential development sites. The mobile market was characterised by a significant increase in the take-up of 3G.

The most significant regulatory issue in 2007 remained the implementation of the fixed incumbent's undertakings in the framework of functional separation. Ofcom's second Telecoms Strategic Review Evaluation, published in December, highlighted the need for stronger financial incentives to improve the quality of service provided to alternative operators by the fixed incumbent's regulated wholesale access division.

REGULATORY ENVIRONMENT

Main regulatory developments

Ofcom was one of the first regulators to begin the second round of market reviews. In 2007, it completed the review of the wholesale mobile termination market, which resulted in a number of appeals to the Competition Appeal Tribunal (CAT), and it notified a review of the wholesale broadband access market to the Commission. At the same time, the announced leased lines and SMS market reviews have been delayed.

An important issue for alternative operators is the future regulation of Next Generation Access Networks, on which Ofcom has taken a proactive stance. In September 2007, it launched consultation on, inter alia, specific remedies that may be appropriate to address the concerns raised by next generation access networks, which give their owners significant market power (SMP) in the relevant markets

The implementation of the fixed incumbent's undertakings made headway, although some specific milestones were revised at its request and following consultation with Ofcom. A few milestones have been reported as missed in the process. The Equality of Access Board (EAB), established by the fixed incumbent to oversee functional separation, has detected a number of breaches, mostly related to information sharing between the fixed incumbent's regulated wholesale and retail divisions; these were subsequently remedied. Overall, some alternative operators appeared more critical than a

year ago regarding the effectiveness of the regulatory and institutional system established to ensure the implementation of the undertakings given.

In 2007, Ofcom took further action in relation to number portability, which will be based in the future on a common database to be established by the industry. At the same time, it also provided for further gradual reductions in mobile number porting times with a view to making the process even faster and recipient-driven.

As regards the future use of GSM spectrum, Ofcom launched a consultation which, amongst other options, included a proposal to take away some of the GSM spectrum holdings from its current assignees and to release it to other users.

A number of measures were taken to strengthen the regulation of VoIP services, starting with improved transparency as to the provision of access to emergency services, plus an obligation placed on certain categories of VoIP providers to ensure access to emergency numbers as from 8 September 2008.

Ofcom also took measures in the area of non-geographic numbering services with the aim of curtailing call charges and making them transparent.

Organisation of the NRA

The independence of Ofcom is generally recognised, even to the extent that some market players would like to see a stronger oversight of Ofcom and a wider choice of remedies to challenge its decisions. The CAT has an established reputation as a competent appeal body, but its procedures are regarded as too costly for smaller players.

Ofcom is in a position to attract and employ qualified staff, although there has been some concern over the fact that several key people have recently left. One area of its activity that prompted criticism from certain market players was the quality of its regulatory impact assessments. Specifically, this concerned Ofcom's decisions to introduce pre-call announcements for calls to certain non-geographic numbering ranges, which had had to be re-examined as a result of implementation problems.

Decision-making

Apart from Ofcom, a number of regulatory or implementing bodies are relevant to the telecommunications sector, such as the premium rate regulator PhonepayPlus (formerly ICSTIS), the Office of the Telecoms Adjudicator (OTA2), the industry organisation NGN UK and the Equality of Access Board (EAB) of the fixed incumbent. However, Ofcom is the only body with binding powers to resolve disputes, while the others have a more supervisory and advisory character. Although Ofcom has to deal with a growing number of disputes, it is generally acknowledged that it adheres to the four-month time limit prescribed by law for resolving disputes.

It was noted by several market players that, in 2007, Ofcom strongly focused its activity on the residential markets and private consumers. These consumer-related actions also had effects on operators providing services to business clients. According to some alternative operators, the increased focus on retail regulation should not be at the expense of continued and rigorous wholesale regulation.

A number of cases reported in the previous Implementation Report are still pending either in Ofcom or on appeal. In particular, Ofcom has yet to issue a final determination to resolve disputes between the fixed incumbent (and universal service provider) and alternative providers of directory services. This determination is also expected to lead to a review of regulatory policy in this area. Another example is the case concerning the status of GSM gateways, where, following a CAT judgment in 2006 which gave a purposive interpretation of the domestic law applicable to mobile operators' licences in the light of Community law, Ofcom finally succeeded in obtaining leave to appeal to the Court of Appeal.

There have been a number of disputes between smaller terminating communication providers and the fixed incumbent or mobile network operators (MNOs) over call termination rates. For example, Ofcom is dealing with a dispute between a number of terminating communication providers and the fixed incumbent concerning the call termination rates for the recently reorganised '0870' non-geographic numbering range. In one reported case, the High Court issued an injunction imposing interconnection between a mobile VoIP provider and a MNO under the Competition Act without, however, specifying the termination rate due, which remains to be determined.

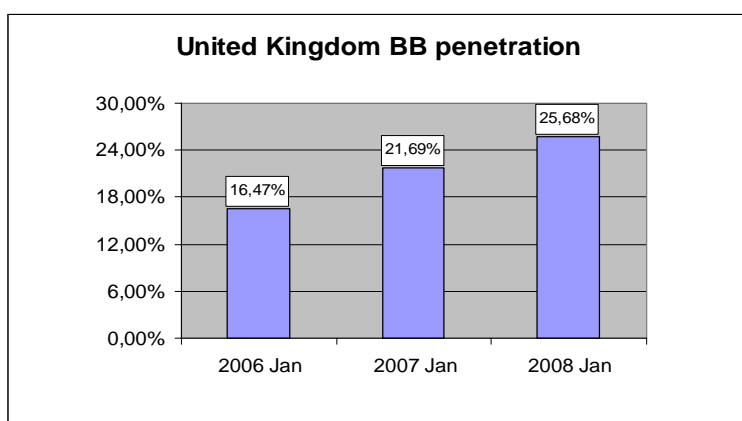
MARKET AND REGULATORY DEVELOPMENTS

The total turnover of the United Kingdom telecommunications sector was about €67.1 billion as at 31 December 2006; the revenue from fixed services was about €23.2 billion, and that from mobile services was about €23.1 billion.

In 2007, around one third of United Kingdom households used bundled services and around 2.2 million people used triple or quadruple-play services, including broadband, voice telephony, IP TV and mobile telephony. There was intensive retail price competition to the extent that a number of operators are offering bundles of converged products including "free" broadband connection.

Broadband

Market situation

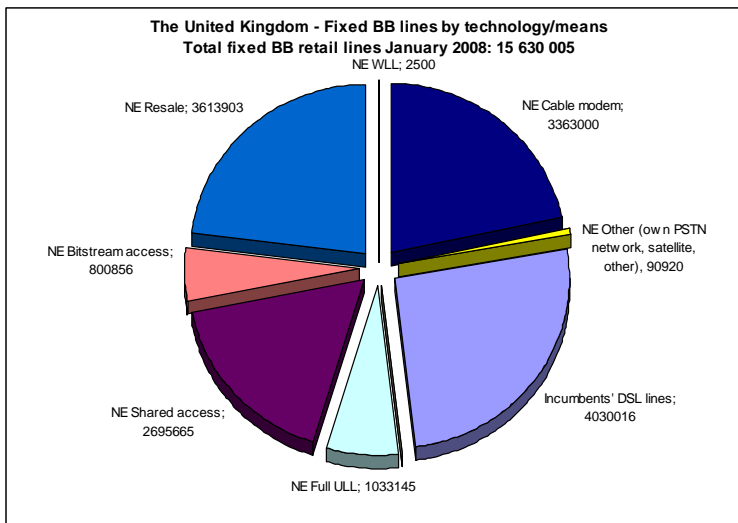


The UK broadband market saw another year of strong growth. The broadband penetration rate rose to 25.68% in January 2008 compared to 21.69% in January 2007. Although still above the EU average, this growth rate of 3.99 percentage points is still less than the 5.22 percentage points reported for a similar period a year earlier. As of

31 December 2006, the difference in broadband coverage between urban and rural areas was 4.5 percentage points in the case of DSL coverage (95% coverage in rural areas

compared to 99.5% at national level) and 45.3 percentage points in the case of cable coverage (4.8% coverage in rural areas compared to 50.1% at national level)¹.

Local loop unbundling (LLU) continued to make strong progress during 2007, with the number of LLU lines approaching 4 million in January 2008 compared to about 1.5 million in January 2007. The fixed incumbent's 25.8% share of the retail broadband market, though slightly higher than a year ago (23.7%), remains among the lowest in the EU.



Compared to other Member States, the United Kingdom continues to have the largest market share of resale of the fixed incumbent's broadband offering, although that share has decreased significantly from 34.7% a year ago to 23.1% in January 2008.

In 2006, at the request of alternative operators, the fixed incumbent had launched a consultation on a wholesale offer of 'naked DSL'. However it subsequently received no expressions of interest from the industry and therefore planned to issue a 'closure statement'.

Regulatory issues

The OTA2 reported regularly on the service level agreements/service level guarantees (SLAs/SLGs) review and facilitated the negotiations between the fixed incumbent and alternative operators. These negotiations were intended to lay down an improved set of SLA/SLG components within contracts for LLU, wholesale line rental (WLR) and Ethernet products that would create enhanced incentives to improve quality in provisioning and repair timescales and processes. However, the matter was eventually referred to Ofcom. The key unresolved issues were the automatic payment of compensation to WLR2 operators, which was not accepted by the fixed incumbent (whereas it is provided for operators using the new WLR3 product), and the compensation offer to be included as part of the provision and repair SLGs for Ethernet products. In December, Ofcom launched a consultation on its proposals to strengthen the existing SLAs and the levels of compensation to be paid to alternative operators in the event that the required levels of service are not satisfied.

As regards Next Generation Networks (NGNs), Ofcom launched a consultation in September 2007 on the policy approach to next generation access to seek the views of stakeholders on the system of remedies that could apply in the NGN environment so as to allow alternative operators to use the fixed incumbent's fibre infrastructure. This issue is important to the alternative operators, who are concerned about how equivalence of access will be guaranteed in the NGNs. To encourage discussion in the area, Ofcom

¹ IDATE report from October 2007: Broadband coverage in Europe

established an industry body - NGN UK - in 2006; since then this body has increased its membership and has made progress in agreeing the technical arrangements for NGNs.

The second-round review of the wholesale broadband access market, on which Ofcom launched a consultation at the end of 2006, was submitted to the Commission in November 2007. In this market review, Ofcom proposed to define certain sub-national wholesale markets based on the level of competitive entry and population density in exchange areas, and to deregulate parts of the national territory.

Mobile Markets

Market situation

Mobile penetration was 119% in 2007 (up from 109% in 2006) with 72.2 million subscriptions. The take-up of 3G progressed to reach 8.3 million users, or 11.6% of all mobile subscribers, in October 2007. The four established network operators continued to have market shares within a few percentage points of each other, while the new entrant was the largest 3G operator in terms of subscribers. The mobile market has seen the biggest falls in prices due to the strong price competition between the providers to attract users as market growth slows. The United Kingdom also has a relatively large number of mobile virtual network operators (MVNOs) and other service providers active on the mobile market, which provide services to a growing number of customers.

Regulatory issues

A second-round review of the mobile termination market was completed by Ofcom in 2007. As a result of the market analysis, Ofcom introduced a set of new charge controls on mobile call termination rates that would run for four years from 1 April 2007. Ofcom concluded that each of the five MNOs still had significant market power for termination of voice calls on their networks and decided to impose charge controls on the mobile termination rates set by each network. Both the MNOs and the fixed incumbent have appealed against this decision. The SMS market review, which was also planned for 2007, was deprioritised and has not been started.

In December 2007, Ofcom introduced monitoring procedures to boost confidence in the MNOs compliance with the charge controls. From March 2008, in addition to the Compliance Return that the MNOs currently provide in private to Ofcom, the MNOs will produce and publish documentation describing how the return is prepared. Additionally, from 2009, the MNOs will procure and publish an assurance report from Independent Accountants on these documents.

In 2007, Ofcom issued determinations to resolve a number of mobile termination rate disputes between the fixed incumbent on the one hand and MNOs on the other, as well as between MNOs. Appeals against some of these Ofcom determinations have been made to the CAT. Ofcom has also resolved a number of disputes on number portability, concerning the “donor conveyance charges” payable by the recipient network operator to the donating network operator for the routing in relation to calls made to ported mobile telephone numbers. An appeal against one of these Ofcom determinations has been lodged with the CAT. The appellant has asked the CAT not only to set aside the decision and to oblige Ofcom to take a new decision, but also to provide for an industry-wide solution. Although there are plans to introduce direct call routing to ported numbers, the

new system will be introduced gradually, with the deadline for mobile numbers being 1 September 2009; this means that the donor conveyance charges issue will persist for some time.

An important development in 2007 was the consultation launched by Ofcom in September on the re-farming of GSM radio spectrum, proposing removal of the existing limitation confining the use of this spectrum to GSM and allowing for a wider range of uses, including high-speed mobile broadband services using 3G. Amongst other options it consulted on a proposal to withdraw some of the 900 MHz spectrum from its current assignees and re-assign it to new users in order to reduce the risk of a reduction in downstream competition.

Roaming

The Roaming Regulation has been implemented, but four of the United Kingdom's five MNOs have appealed to the High Court against the Government's secondary legislation implementing the Regulation as a means of challenging the Regulation's validity. The High Court decided in December to make a reference to the ECJ for a preliminary ruling.

Fixed markets

Market situation

According to OTA2, in January 2008 there were 4.56 million WLR lines and 5.89 million telephone numbers using carrier pre-selection (CPS). The growth in the number of WLR lines has slowed considerably and the number of CPS enabled lines continues to decline as operators are switching CPS and WLR customers onto their LLU networks. The intensity of competition in the fixed telephony market is shown by the fixed incumbent's decreasing market share, which dropped to 49.3% by retail revenue in December 2006 and is the lowest in the EU. Interconnection charges for call termination on the incumbent's fixed network also remain among the lowest in the EU countries in all three categories (local, single transit and double transit).

Regulatory issues

As regards the implementation of the fixed incumbent's undertakings, a major milestone in 2007 was the placing on the market of the WLR3 product. Although it was made available in June 2007, take-up was slow as only very few alternative providers switched their clients to this new product. The fixed incumbent is required to move its customer base gradually onto WLR3, whereas others are able to choose when to do so.

It was noted that since the fixed incumbent's retail division had moved its clients to WLR3, it became more difficult for competitors to get those customers to switch to their services, which are based on WLR2. While automatic payment of compensation for breach of SLAs is laid down for WLR3, the same is not the case for WLR2. This issue was one of the reasons for the failure of negotiations on the SLAs/SLGs between the fixed incumbent and the alternative operators that were subsequently referred to Ofcom.

Broadcasting

Market situation

The take-up of digital television continues to increase, with around 80% of households now having digital television. Digital terrestrial television (DTT) is currently available to around 73% of the population. High Definition services have attracted nearly 450 000 subscribers.

Regulatory issues

The United Kingdom's analogue television signals will be switched off, region by region, between 2008 and 2012. Ofcom consulted on the use of the digital dividend in December 2006 and published a statement in December 2007 setting out its approach to the allocation of this spectrum. It was already decided in 2003 that 70% of the spectrum currently used for analogue television should be reserved specifically for use by DTT (i.e. 256 of 368MHz). According to this latest statement, Ofcom will auction most of the digital dividend in a way that allows users to decide how the spectrum should be used. The auction of the cleared spectrum could be held in the first half of 2009.

Concerning access to content, the fixed incumbent and three other companies have made a submission to Ofcom to investigate the pay TV industry and to consider whether to make a market reference to the Competition Commission under the Enterprise Act 2002.

Horizontal regulation

Spectrum Management

Ofcom has continued its programme of making spectrum available to the market – generally through auctions of tradeable licences on a technology- and application-neutral basis. In 2007, Ofcom awarded 1785-1805 MHz spectrum in Northern Ireland, in parallel with a similar auction in the Republic of Ireland. Ofcom also announced auctions to be held in 2008 for parts of the 10, 28, 32 and 40 GHz bands; for the 1452-1492 MHz band, which is of interest to proponents of mobile TV services; and for the 2.6 GHz and 2010 MHz bands. The 2.6 GHz band is particularly interesting for service providers wishing to use UMTS and WiMAX technologies. Ofcom's statement on the liberalisation of the current GSM spectrum is expected in 2008, as are detailed proposals for the award of the UHF spectrum released by the switchover from analogue TV.

The framework for spectrum trading was established in 2004. All new licences that are awarded are tradeable, and a number of existing licence classes have been made tradeable. Ofcom intends during 2008/9 to extend the number of licence classes which are tradeable to include high volume business radio licences. The volume of spectrum trades has continued at a modest level, influenced by the ongoing programme of awards of new spectrum bands.

Apart from organising auctions, Ofcom also issues many licences to small businesses for use in limited areas in the 400-450 MHz band. There is a plan to simplify the assignment process by reducing the number of classes of licence, abandoning the specific types of licence for each kind of use and making certain uses licence-exempt.

Wireless devices are exempted from licensing where there is no danger of harmful interference, and certain bands are allocated for general licence-exempt use. In 2007, Ofcom published its Licence Exempt Framework Review, which determined that

spectrum above 100 GHz was likely to be suitable for licence-exempt devices, and setting out policies for exempting low-power devices at lower frequencies.

Ofcom does not license the spectrum used by the Government, but is working with the Government to optimise radio spectrum rights. This will enable the State institutions to trade their spectrum, thus enabling it to be used more efficiently. In July 2007, Ofcom published a consultation document containing proposals to extend market mechanisms in order to improve the management of public sector spectrum holdings.

The United Kingdom has implemented the Commission's decisions on radio spectrum harmonisation, with the exception of high-power aspects of Decision 2005/928/EC, on which Ofcom issued a consultation in October 2007, and Decision 2007/98/EC on which Ofcom intends to issue a consultation early in 2008.

Taxation of the telecommunications infrastructure

The Department for Communities and Local Government issued a consultation document in July 2007 concerning the taxation of the local loop. It argued that it would be too difficult and burdensome to assess LLU network operators and that it was therefore preferable to have the fixed incumbent continue to pay the tax on the local loops. This approach has been contested by some market players, who pointed out that a different methodology was being applied to the fixed incumbent compared to alternative operators for the purpose of assessing the tax base. The new system would apply from 1 April 2008 and, as an interim measure, the fixed incumbent is considered to be in occupation of the local loops.

CONSUMER INTEREST

Tariff transparency

In 2007, Ofcom continued its work on reorganising the system of non-geographic numbers, which has been the subject of considerable public concern. Several business models have been built on the use of non-geographic numbers and Ofcom's plans to change the rules may have a significant impact on a number of operators. Ofcom reviewed the '070' numbering range and required a free pre-call announcement to improve pricing transparency as from 1 September 2007 if the call charge exceeded a certain amount. Moreover, it was planned that, as from 1 February 2008, '0871' numbers – for which the call charge may not exceed a fixed amount – would be subjected to regulation by the premium rate regulator, PhonepayPlus. Calls to '0870' were also to be charged at national rates as from 1 February 2008 and a pre-call announcement was to be made if the charge exceeded the charge for a national call.

These proposals were subject to public consultation. However, after the implementation of pre-call announcements for '070' numbers, technical problems were reported with the reliability of certain safety related services. Ofcom therefore decided to withdraw the requirement for announcements and also to reconsider its decision to apply announcements to '0870' numbers. It planned to issue a new consultation on this matter in Spring 2008.

Universal Service

After sending a Reasoned Opinion in June 2007, the Commission closed the infringement proceeding against the United Kingdom in October 2007 after the United Kingdom authorities agreed with the mobile industry on a number of corrective measures to allow mobile subscribers to be included in the comprehensive directory and directory enquiry service if they so wish.

On the other hand, Ofcom has still to issue the final determination in two disputes between the fixed incumbent and directory providers which opened at the end of 2005 and the beginning of 2006 respectively. As proposed in the draft determination (already published), Ofcom may find the universal service obligation to be unlawful. Ofcom expects to publish the determination on the disputes in early 2008 and is likely to call for a policy review and public consultation on the appropriate regulatory framework for the delivery of directories and directory services. The Commission will continue to follow this process closely.

Number portability and switching

In 2007, Ofcom resolved a number of disputes concerning donor conveyance charges that currently apply between operators for routing calls to ported mobile telephone numbers. Acknowledging the problems arising from the current number portability system, Ofcom carried out consultations and decided to change the system so that calls to ported numbers are routed directly to the consumer's new provider, as is common practice in other Member States. In July, Ofcom decided that the industry should create a common number portability database and, at the same time, it reduced the maximum porting times for mobile numbers to two working days as from 31 March 2008. In its second statement issued in November 2007, Ofcom specified the implementation timetable for the new number portability system that is due to become operational by 1 September 2009 for mobile numbers and by the end of 2012 for fixed numbers. At the same time, it further reduced the maximum porting time for mobile numbers to just two hours with effect from 1 September 2009. It now remains to be seen how these requirements will be implemented by the industry.

At the end of 2006, Ofcom issued a statement on switching broadband providers, which placed an obligation on service providers to issue customers with Migrations Authorisation Codes (MACs) within five working days. Availability of this code has made it easier for consumers to switch between DSL broadband services, including to LLU providers.

Consumer complaints

The increasing ease of migration from one provider to another has also given rise to the problem of mis-selling – or arbitrarily switching providers without the customer's consent. Ofcom receives about 500 complaints every month on fixed line mis-selling in which customers complain about being moved to another provider without their consent. To deal with the problem, Ofcom issued a statement in 2007 on protecting consumers from mis-selling of telecommunications services, which imposed an obligation on providers to establish and adhere to a code of practice for sales and marketing.

European emergency number 112

In March 2007, Ofcom amended the General Conditions imposing transparency obligations as regards service reliability and access to emergency numbers. It also made number portability dependent on whether or not the service enabled access to emergency numbers. Following a new consultation in July, Ofcom issued a Statement in December which further amended the General Conditions on this issue. As a result, VoIP services – which provide access to ordinary telephone numbers – will also be required as of 8 September 2008 to ensure access to emergency numbers. This is a valuable initiative, particularly in the light of the Commission’s regulatory framework review proposals in this regard and the general increased attention within the Community concerning access to 112.

Data Protection

In August, a letter of understanding was signed between Ofcom and the Information Commissioner’s Office (ICO) – the institution that is responsible, inter alia, for ruling on complaints and taking enforcement action on the basis of the Privacy and Electronic Communications (EC Directive) Regulations 2003. Given that Ofcom also exercises enforcement powers in areas covered by these Regulations, this letter sets out the principles according to which Ofcom and ICO will decide which organisation is best placed to investigate issues of suspected non-compliance.

Directive 2006/24/EC on the retention of data was transposed in the United Kingdom by Data Retention (EC Directive) Regulations 2007.