

# **UNITED KINGDOM**

## **INTRODUCTION**

In 2008, the electronic communications sector in the United Kingdom (UK) saw continuing progress in broadband take-up and local loop unbundling (LLU) and there were increasing moves by operators to offer higher broadband access speeds. A cable operator launched a major upgrade of its network and the fixed incumbent announced its investment plans in next generation access networks for the coming four-year period. On the retail side, an increasing number of consumers are taking up bundled offers from a single provider.

The performance of the fixed incumbent's functionally separated access division was broadly perceived to have improved over the past year. The UK regulatory authority — the Office of Communications (Ofcom) — completed the second review of the broadband access market, which resulted in partial deregulation of the market on a geographical basis. While Ofcom was one of the first national regulators to complete the first round of market reviews in 2003–2004, some second-round market reviews are still outstanding. The past year was also marked by a number of successful appeals against Ofcom decisions in the Competition Appeal Tribunal (CAT).

## **REGULATORY ENVIRONMENT**

### **Main regulatory developments**

A major development in the implementation of functional separation of the fixed incumbent was the adoption of service level agreements and service level guarantees SLAs/SLGs by Ofcom in March 2008, after voluntary negotiations between the fixed incumbent and alternative operators failed on this issue earlier in 2007. These new SLAs/SLGs were generally well perceived by alternative operators and are expected to contribute to reinforcing non-discriminatory treatment of these alternative operators regarding non-price elements in the provision of Wholesale Line Rental (WLR), LLU and Ethernet services.

In 2008, Ofcom completed the second-round review of the wholesale broadband access market. It was the first case in the EU where a regulator defined sub-national wholesale markets based on the level of competition, sustainable market entry and population density in exchange areas, and, in consequence, deregulated parts of the national territory. Furthermore, Ofcom continued working on its policy approach to next generation access networks and carried out a second-round review of the leased lines markets. On the other hand, 2008 saw the annulment by the CAT of Ofcom decisions regarding the UK number portability system.

During the past year, Ofcom initiated several measures to enhance consumer protection, including strengthening of the regulation against consumer abuses in the mobile sector, improving the information to be provided to consumers about broadband speeds and about the quality of service as well as improving the accessibility of alternative dispute resolution mechanisms. On the other hand, definitive decisions still have not been taken regarding the charging for calls to certain non-geographic number ranges. A specific issue in the consumer protection context, which gave rise to particular concerns from a number of citizens and will continue to require attention by the UK authorities in the future, was the use of online behavioural advertising technologies by Internet Service Providers.

## **Organisation of the NRA**

While Ofcom is perceived to be very well resourced as far as regulation of consumer issues is concerned it is considered by some operators to lack resources for dispute resolution. It was noted in this regard that, in 2008, some disputes were not resolved within the prescribed four months time limit and exceptional circumstances were invoked for the extension. Ofcom's work is characterised by thorough consultation procedures before taking decisions, which entail additional time needed for review of the submissions made to it by interested parties.

## **Decision making**

During 2008, the CAT issued two judgments on appeals against Ofcom decisions, which, apart from dealing with the specific merits of the cases in question, also scrutinised the way Ofcom performs dispute resolutions and regulatory impact assessments.

The first relevant CAT judgment was passed in May 2008 and concerned Ofcom determinations from 2007 in disputes concerning Mobile Termination Rates (MTRs) in the time period from 2004 until 1 April 2007, the date on which current regulatory measures resulting from the second review of mobile call termination markets took effect. During the period up to 1 April 2007, only 2G rates were subject to price control measures and not 3G rates. In consequence, mobile network operators (MNOs) introduced 3G/2G 'blended' MTRs for all calls, which exceeded the regulated 2G rates and gave rise to the disputes in question. Ofcom agreed in its 2007 determinations that 3G termination could cost more than 2G termination and that it did not need to be cost-oriented.

The CAT considered that Ofcom had not properly exercised its dispute resolution powers and that it should have determined fair and reasonable rates instead of relying on the 2004 decision not to regulate the 3G termination rates. In this respect, it should be noted that, when the relevant draft measure was notified in 2004, the Commission, in its comments, called for stronger regulation of 3G termination rates. In response to this CAT judgment, Ofcom is expected to issue new guidelines on dispute resolution.

The second relevant CAT judgment was issued in September 2008 and concerned Ofcom's decision of November 2007 concerning number portability, which obliged operators to establish a central number porting database to enable direct routing of calls to ported numbers and reduced mobile number porting times to two hours. The CAT set aside Ofcom's decision stating that the cost-benefit analysis performed by Ofcom was not carried out to the requisite standard and did not withstand the required level of scrutiny.

CAT is generally perceived as a competent and efficient body to which decisions of Ofcom can be appealed, but lodging appeals can involve significant costs. CAT judgments can be further appealed to the Court of Appeal.

## **MARKET AND REGULATORY DEVELOPMENTS**

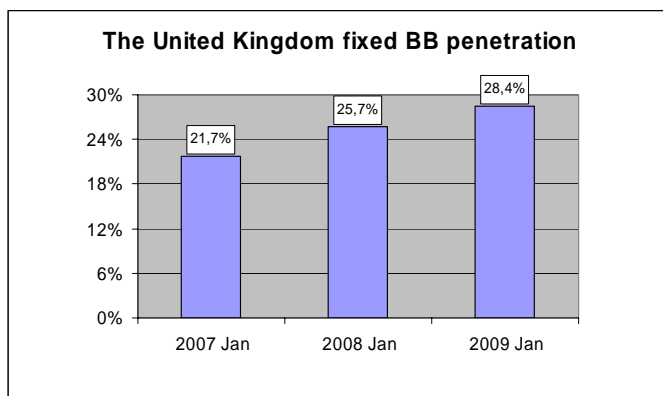
The total turnover of the United Kingdom telecommunications sector was about €56.7 billion as at 31 December 2007; the revenue from fixed services was about €30.25 billion, and that from mobile services was about €26.45 billion. The total value of tangible investments in telecommunications networks is estimated at €8.93 billion for 2007.

In 2008, 32.05% of the UK population used bundled services, which is the highest percentage in the EU. Specifically, 17.31% of the population had subscribed to double-play and 12.18% had subscribed to triple-play packages. Bundles are made attractive by offering discounted

prices, commonly ‘free broadband’, but can also mean that customers are tied into longer contracts.

## Broadband

### *Market situation*



The UK broadband penetration rate rose to 28.4% in January 2009 compared to 25.7% in January 2008, which constitutes a growth rate of 2.7 percentage points that is close to the EU average growth rate of 2.8 percentage points. However, it is less than the growth of 4 percentage points reported for a similar period a year earlier.

National DSL coverage<sup>118</sup> increased from 99.5% at the end of 2006 to 99.6% at the end of 2007 and DSL coverage in rural areas increased from 95.0% to 96.1% over the same period. The DSL rural gap with national coverage accordingly narrowed from 4.5 to 3.5 percentage points.

According to the Office of the Telecoms Adjudicator (OTA2), LLU continued to progress during 2008, with approximately 5.5 million LLU lines in January 2009 compared to slightly less than 4 million in January 2008. The fixed incumbent’s share of the retail broadband market slightly decreased (25.4% compared to 25.8% a year ago) and is the lowest for a fixed incumbent in the EU. The market share of resale of the fixed incumbent’s broadband offering continued to decrease reaching 17% in January 2009 compared to 23.1% a year ago. It nevertheless remains the largest resale market share in the EU countries. The UK did not provide information about the take-up of mobile broadband to the Commission. However, Ofcom reports on a substantial take-up of mobile broadband in the UK.

The ongoing core network upgrade by the fixed incumbent should allow up to 24Mb/s data rates over the existing copper loops. Points of interconnection have been agreed with alternative operators and the special industry body — NGN UK — works on migration arrangements. In 2008, a major cable company launched 50 Mb/s services to consumers while the fixed incumbent announced a 1.5 billion GBP investment into next generation access networks over a four year period up to 2012. It plans to implement a solution to allow data rates of about 40Mb/s. Two pilot sites have been announced for initial deployment in July 2009 and it is expected that half a million subscribers will be connected in the subsequent phases.

In addition, the fixed incumbent has deployed a fibre to the home (FFTH) solution in a first new build site, where residents will benefit from data rates of 100Mb/s. At the same time a number of other entrants are planning to deploy fibre to new build developments across the UK. However, these may be affected by a slowdown in construction of new homes given recent economic developments. The retail demand side for fibre access is also generally

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<sup>118</sup> Source: IDATE reports ‘Broadband coverage in Europe’.

considered problematic because of competition from Digital Terrestrial Television (DTV) and satellite television as regards in particular the provision of High Definition services.

As of 1 January 2009 about half (56.5%) of the UK fixed broadband lines were in the access speed range between 2 and 10Mb/s, while 36% of lines were in the speed range below 2Mb/s. The reported share of high-speed lines of above 10Mb/s was 7.4%, which is below the EU average of 14.1%. As regards broadband pricing, providers are moving away from volume caps but maintain the 'fair usage clauses' in consumer contracts to prevent congestion.

## **Regulatory issues**

In May 2008, Ofcom completed the second-round review of the wholesale broadband access market. It was the first case in the EU where a regulator defined sub-national wholesale markets based on the level of competition, sustainable market entry and population density in exchange areas. In consequence, Ofcom deregulated parts of the national territory where the fixed incumbent will no longer be subject to regulation after a 12-month transitional period.

Following the failure of the negotiations in 2007 between the fixed incumbent and alternative operators, the determination of SLAs/SLGs for the provision of WLR, LLU and Ethernet services was referred to Ofcom. In consequence, Ofcom decided in March to require the fixed incumbent to pay alternative operators compensation for WLR2, WLR3 and LLU proactively and to re-structure Ethernet service compensation payments for late provision and repair. These SLAs/SLGs only apply to the wholesale products existing at the moment of their adoption. In this regard, Ofcom stated in its decision that these principles could apply equally to other products and services. It therefore expects that the SLAs/SLGs for any new products will be consistent with those mandated for existing products.

In 2008, Ofcom continued the work on the system of remedies that could apply in the next generation access (NGA) environment. First, Ofcom issued a Statement in September, which focused specifically on NGA networks deployed in new housing developments. At the same time Ofcom issued another consultation concerning NGA networks more generally. In the meantime, the fixed incumbent is consulting with the industry on wholesale NGA products.

In the course of 2008, Ofcom reviewed both wholesale and retail leased lines markets ('Business Connectivity Market Review'). Ofcom's final Statement published in December distinguished wholesale terminating segments of leased lines markets into separate product markets according to bandwidth. These product markets are then further distinguished geographically. Ofcom designated the fixed incumbent and the incumbent operator of the Hull area as SMP operators in some of these markets with different sets of remedies in each case. In addition, Ofcom maintained the SMP status of the fixed incumbent in the leased lines retail market and trunk segments of the leased lines markets after having shown that these markets meet the three criteria test, which regulators have to carry out if they wish to regulate markets, which have been removed from the new Commission Recommendation on the relevant markets adopted in December 2007.

## **Mobile markets**

### *Market situation*

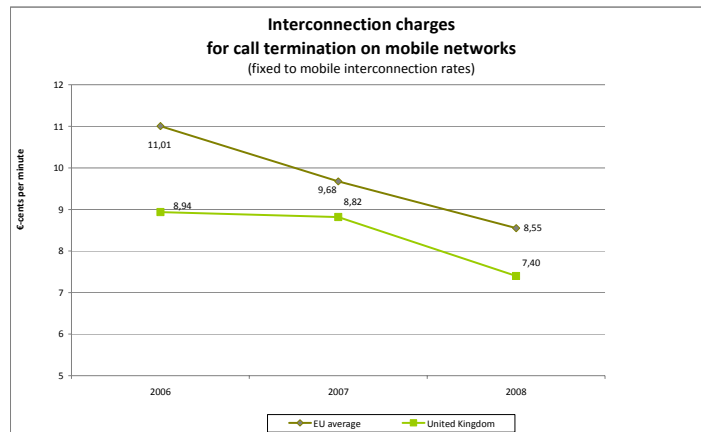
The UK mobile penetration rate increased slightly to reach 121.19% in July 2008. According to Ofcom, the take-up of 3G progressed to reach 12.5 million users, or 17% of all mobile subscribers, at the end of 2007. The leading mobile operator's market share by subscribers

was 25%, which was the lowest for a leading mobile operator in the EU countries. The four established MNOs 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 average consumer price for mobile services the UK was €19.76 per month, which is close to the EU average of €19.49. Price increases have been reported in 2008, in particular for pre-paid mobile services. The UK continues to have a strong mobile virtual network operator (MVNO) market presence. Successful MVNOs are generally companies which have already established good brand names in other sectors or can offer innovative products.

### *Regulatory issues*

In August, Ofcom launched a public consultation on the assessment of the mobile sector outlining regulatory challenges in the mobile market. These include, in particular, the future regulation of termination markets after 2011, where Ofcom calls for a debate about the possible changes to the structure of mobile termination, such as ‘bill and keep’ arrangements. The mobile termination rates applied by the five MNOs in October 2008 were asymmetric and ranged from €0.0712 to €0.10, the average being €0.074, which is below the EU average of € 0.0855.



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During 2008, the CAT continued its examination of appeals lodged by the fixed incumbent and the new mobile entrant against Ofcom decisions resulting from the second mobile termination market review, which had taken effect on 1 April 2007 to run for four years. The appellants challenged the levels of price caps imposed by Ofcom considering them to be too high. In March, the CAT referred price control elements of these cases to the Competition Commission. In addition, the new mobile entrant challenged its SMP designation and the imposition of the price control, on which the Tribunal’s judgment is pending. Another MTR related dispute was launched in November 2008 by one the new entrant mobile operators using the low-power GSM technology in the DECT guard band frequencies, which applied to Ofcom to resolve its dispute with one of the established MNOs.

In 2008, the CAT also examined the appeals which had been submitted in 2007 by the fixed incumbent, the new mobile entrant as well as a number of fixed operators against Ofcom dispute determinations concerning the MTRs applied up to 1 April 2007. By two separate judgments, one of which is referred to in the section on ‘decision making’ above, the CAT set aside the Ofcom decision and resolved the disputes on their merits. By a subsequent order, the Tribunal gave Ofcom specific directions as to the decision to be taken regarding each dispute and termination rate.

The long-standing case concerning Ofcom’s policy on GSM gateways was still pending in the Court of Appeal following Ofcom’s appeal against parts of the relevant CAT judgment dating from 2006.

## **Roaming**

In December 2007, the High Court decided to make a reference to the ECJ for a preliminary ruling concerning the validity of the Roaming Regulation in the case brought by four MNOs against the Government's secondary legislation implementing the Regulation. This reference essentially concerns the legal basis and proportionality of the Regulation and the procedure before the ECJ is pending.

## **Fixed**

### *Market situation*

According to OTA2, in January 2009 there were 5.41 million WLR lines and 4.13 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 is declining increasingly faster as operators continue switching CPS and WLR customers onto their LLU networks. In addition it is due to resellers buying an end-to-end wholesale calls product from the fixed incumbent rather than CPS-based calls from a CPS operator.

The fixed incumbent's market share in the fixed telephony market slightly increased during 2007 both by retail revenue and volume of traffic and stood at, respectively, 58% and 56% in December 2007. It nevertheless remains one of the lowest market shares for an incumbent in the EU. Charges for call termination on the incumbent's fixed network are the lowest in the EU countries in all three categories (local, single transit and double transit) and on average two to three times lower than the respective EU averages.

The introduction of the WLR3 product, which the alternative operators initially viewed with reluctance because of concerns over its stability, was advancing in 2008. About 25% of the fixed incumbent's retail customers had been migrated to WLR3 by the end of 2008 and all new customers of all providers are currently being connected using WLR3. All PSTN customers are expected to be migrated to WLR3 by June 2010.

### *Regulatory issues*

In 2008, Ofcom began the preparation for the second-round review of the retail and wholesale narrowband markets, which were reviewed by its predecessor Oftel back in 2003. A consultation is expected in the first quarter of 2009.

## **Broadcasting**

### *Market situation*

According to Ofcom, digital television take-up grew by 3.4 percentage points in the twelve months to reach 88.2% of households at the end of September 2008, delivered by various digital platforms. This increase was led by the popularity of the free-to-view DTT service but also by continuing growth in satellite and cable pay services. The approximate market shares of the digital television platforms in terms of households connected was 38% for DTT, 37% for satellite and 13% for cable. Finally, 0.3% of UK households subscribed to IPTV as their main television platform. The number of high-definition television (HDTV) subscribers, currently delivered by satellite or cable, doubled between Q3 2007 and Q3 2008, from 548 000 to 1 133 000 households out of the total 25.6 million households.

In terms of coverage, before the start of digital switchover 73% of UK households could access all available DTT services, with around 80% of households capable of receiving the digital equivalents of the analogue public service broadcasts. Digital switchover in the UK takes place TV region by TV region, and started in one region in 2008. Once the programme is completed by the end of 2012, the coverage of services from the public service broadcasters will be 98.5% households, matching that previously available for the analogue service.

### *Regulatory issues*

The current DTT multiplex licences expire in 2010 or 2014 depending upon the date of issue and are renewable for a further 12 years. In 2008, Ofcom consulted on the renewal of two licences expiring in 2010 and consequently decided that they can be renewed on the existing terms. The conditions of the relevant licences will be amended accordingly.

Ofcom continued to work in 2008 on access to premium rate content, which is considered of primary importance in determining the customer's choice of pay TV services that can be provided over different platforms. Further to the investigation opened in 2007, Ofcom issued another consultation in September on the distribution of premium content. Under its sectoral competition powers, Ofcom proposes to require the dominant broadcaster to provide wholesale designated premium channels on regulated terms. In addition, it stated that there is a possibility of a reference to the Competition Commission under the Enterprise Act

## **Horizontal regulation**

### *Spectrum management*

During 2008, Ofcom assigned rights to use frequencies in the 10 GHz and 40 GHz bands, which are used for point-to-point transmission networks, and in the 'L' band (1452-1492 MHz), which the assignee plans to use for mobile TV services (using standards other than DVB-H). In April, Ofcom published procedures for the award of spectrum in the 2500 – 2690 MHz and 2010 – 2025 MHz ranges. However, these were appealed by two MNOs arguing that Ofcom should have first taken a decision in relation to the liberalisation and potential reallocation of spectrum in the 900 MHz and 1800 MHz ranges, in the absence of which they contend that it is not possible for them to assess the value of this proposed spectrum. The CAT decided that it does not have jurisdiction to hear these appeals, and the Court of Appeal dismissed appeals against this decision in December 2008. In addition, the same case has also been submitted for judicial review in the High Court which will be held on an expedited basis in early 2009.

Ofcom is consulting on proposals to withdraw a part of 2G spectrum at 900 Mhz and 1800 Mhz from existing holders with a view to opening it up for other uses (refarming). A further consultation is planned for early 2009.

During 2008, Ofcom continued preparations for auctioning a part of the digital dividend. A specific consultation on the auctioning of the cleared spectrum took place in June–August concerning the 550–630 MHz and 790–854 MHz bands, which could be auctioned in 2009. At about the same time, Ofcom also carried out consultations on the award of interleaved spectrum for use by local TV services.

## **Implementation of spectrum decisions**

As far as the Commission spectrum harmonisation Decisions adopted up until 2007 are concerned, in the course of 2008 the UK notified the implementation of the remaining Commission Decisions 2007/98/EC and 2005/928/EC.

## **THE CONSUMER INTEREST**

### **Tariff transparency and quality of service**

In the course of 2008, Ofcom took a number of measures regarding consumer protection. In particular, it published a consultation in July on the review of quality of service information, which is provided to customers on-line through an Ofcom initiated scheme covering fixed voice service providers and a voluntary scheme covering four MNOs.

Regarding the mobile sector, a voluntary industry code of practice that aimed at tackling misleading sales and marketing practices was introduced by the mobile operators in 2007. According to the MNOs, it resulted in significant reductions in the number of disputes. However, Ofcom later came to the conclusion that reliance on this voluntary code was not sufficient and therefore launched a public consultation in March 2008, in which it proposed to introduce new obligations concerning mobile sales and marketing practices.

Regarding broadband, in July Ofcom published a new voluntary code on broadband speeds. Some 43 ISPs, covering over 90% of broadband customers, had signed up to it by December 2008. The Code requires them to give prospective customers an accurate estimate of the maximum speed that their line can support. This Code, however, applies only to fixed broadband and not to mobile broadband, where quality of service issues are also highly relevant in particular because of the instability of transmission speeds depending on traffic.

On the other hand, no definite decisions were taken regarding regulation of calls to non-geographic numbers, which are generally charged at higher rates and are not included in the common consumer calls packages. As a result, they still remain a cause for consumer protection concerns, in particular regarding the '0870' and '0871' ranges, which are particularly popular among UK businesses. In continuation of the work carried out in 2007 and to address the issues which previously led to revocation of some of its earlier decisions in this area, Ofcom published in 2008 further consultations concerning 087 and 070 numbers.

In particular, it proposed that all calls to '0870' numbers should cost no more than calls to geographic numbers unless communications providers publicise higher prices. The final decision on this numbering range is delayed by the ongoing dispute on wholesale termination rates between the fixed incumbent and alternative operators, the resolution of which is still pending in Ofcom. As regards the more expensive 0871, 0872 and 0873 range numbers, Ofcom proposed in particular to bring them within the remit of PhoneyPayPlus, which will monitor compliance and will also be able to consider user complaints.

The PhoneyPayPlus regulation was originally designed to tackle services using the premium rate '09' number range, which are charged at significantly higher rates than calls to these non-geographic ranges. Therefore, concerns have been voiced about the proportionality of applying the entire set of PhoneyPayPlus rules and a more limited regulation is being discussed.

### **Universal Service**

In March, Ofcom launched a consultation on the future regulatory treatment of directory information services and on the same day issued a final determination in the disputes filed by two directory service providers against the fixed incumbent. Both documents deal to a large extent with the current Universal Service Condition 7 (USC 7), which obliges the fixed incumbent to make available its comprehensive telephone subscriber database, which it aggregates by gathering data from all the other operators, to alternative directory service providers on fair, reasonable and cost-oriented terms. As a result, there are several competing directory service providers in the UK that rely on this database.

In Ofcom's opinion, there were no legal powers to impose USC 7 and it therefore proposed repealing it. Acknowledging the potential risks to competition in the directory services market arising from the removal of the USC 7, Ofcom set out in its consultation four possible solutions, which included SMP obligations on the fixed incumbent in an appropriate market to be defined, access-related conditions or competition law remedies. However, by judgment passed in November on appeal against Ofcom's dispute resolution determination, the CAT decided that USC 7 was valid under domestic law.

### **Number Portability**

Under the existing number portability system in the UK, calls to ported numbers are generally routed in the first instance to the donor network, which then routes the call onward to the recipient network. During 2007, Ofcom first decided that the donor mobile network had two business days to complete the porting process as from 1 April 2008. At the end of 2007, Ofcom further required the industry to set up a central database to ensure direct routing of calls to the ported numbers and reduced the length of time to complete the porting process for mobile numbers to two hours.

This second decision was appealed to the CAT, which, by its judgment referred to above in the section on 'Decision making', decided to set it aside and remit the matter to Ofcom for reconsideration. Ofcom was particularly requested to re-consult the industry on the basis of appropriate evidence and analysis in the light of the findings set out in this judgment. One of the disadvantages of the current UK number portability system is that it requires operators to negotiate arrangements and charges for call routing on an individual basis. It would appear that the new entrants in the mobile market (i.e. those who were awarded the DECT Guard band spectrum in the 2006 auction and use low-power GSM technology) still continue to negotiate with each of the five MNOs their arrangements for call routing to ported numbers and none of them is yet able to port numbers. The Commission is monitoring these developments as number portability is a significant enabler of consumer choice.

### **Consumer complaints**

In July 2008, Ofcom launched a consultation on the review of alternative dispute resolution and complaints handling procedures. In this consultation Ofcom proposes to adopt a single Complaints Code of Practice for all providers to replace the existing individual codes of practice of each provider, approved by Ofcom. It will set minimum standards for complaints-handling. In addition, providers will be obliged to inform their customers about the availability of alternative dispute resolution (ADR) schemes to tackle their complaints. Furthermore, Ofcom is proposing to cut the waiting period before the complaint can be presented to ADR from the current 12 to eight weeks after a customer first makes a complaint.

### **European emergency number 112**

In December 2007, Ofcom decided that VoIP services, which provide access to ordinary telephone numbers, must, as from 8 September 2008, also ensure access to emergency numbers 112/999 and provide caller location information to the extent technically feasible. To ensure implementation of these new requirements, Ofcom launched, on the day of their coming into effect, an enforcement programme collecting information and evidence from VoIP providers, network operators and call handling agents in order to monitor compliance and take enforcement actions if required. Furthermore, Ofcom issued a formal notification in November to a fixed line provider for failing to ensure the availability of caller location information for emergency services.

The previously mentioned comprehensive public consultation by Ofcom on the mobile sector referred to the need to reflect on ‘emergency roaming’. The UK is currently one of the few EU countries where it is not possible for domestic mobile users to place emergency calls over another available mobile network when their home network is not available. This means in practice that domestic mobile users are disadvantaged compared to roaming visitors from abroad, who can normally roam onto any available mobile network.

## **116**

Ofcom published a consultation in October on the assignment of the currently reserved 116 range numbers (116000, 116111 and 116 123). The consultation closed in December and Ofcom plans to issue a call for proposals in February 2009 inviting organisations to apply for the operation of these numbers.

### **Data protection**

In this domain, 2008 was marked by the concerns surrounding the deployment by ISPs of a behavioural advertising technology known as ‘Phorm’. Shortly after the fixed incumbent announced its plans to use this technology, it was revealed that it had already trialled it in 2006 and 2007 without obtaining user consent. The European Commission received a great number of submissions from interested parties who felt that the UK authorities, in particular the national data protection authority — the Information Commissioner’s Office (ICO) — was not sufficiently resolute in dealing with complaints about these past trials.

New primary legislation adopted in 2008 (Criminal Justice and Immigration Act 2008) provided for extension of the enforcement powers of the ICO. However, secondary legislation still needs to be enacted to give effect to these new provisions. ICO is responsible for the enforcement of the general Data Protection Act 1998 and of the Privacy and Electronic Communications (EC Directive) Regulations 2003, which transposes most of the provisions of Directive 2002/58/EC (the ePrivacy Directive). However, the provision of this directive concerning the confidentiality of communications is implemented in the UK through a different act, the Regulation of Investigatory Powers Act 2000, which is within the remit of the UK police. In consequence, the UK police also received complaints concerning Phorm and at least one of the police divisions concerned was reported to have rejected the complaints on the basis of lack of criminal intent and implied user consent. Moreover, at the end of September the fixed incumbent launched a new invitation-based trial of the Phorm technology, which brought about further complaints to the Commission, in particular concerning the obtaining of user consent.

In the light of the complaints received, in the course of 2008 the Commission sent two formal requests to the UK authorities requesting clarifications regarding the UK legal framework on e-Privacy and its enforcement in the Phorm case. Taking into account the answers provided

by the UK authorities, the Commission will continue to monitor the application of the relevant EU law provisions in this case.