

UNITED KINGDOM

INTRODUCTION

In 2009, the UK electronic communications market was characterised by falling prices for consumers and reduced household spend on communications services. The use of mobile services was on the rise, including the use of mobile Internet. Also fixed broadband penetration was still growing in 2009, although at a much slower rate than in the previous years. While the fixed incumbent operator remained the largest retail operator, its market share continued to decrease as a consequence of the growth in Local Loop Unbundling (LLU) and Wholesale Line Rental (WLR) uptake by alternative operators. In particular, the incumbent's share of retail fixed voice calls by volume of calls fell to under 50% for the first time at the end of 2008. There was one major consolidation of alternative providers in the broadband sector, and, even more importantly, two of the current five UK mobile network operators launched a merger process.

In the regulatory domain the year 2009 was marked by ambitious Government involvement in the telecoms area through the 'Digital Britain' initiative with far-reaching proposals concerning actions such as modernisation of spectrum, commitment to ensure universal broadband availability and promotion of next generation networks. The UK regulator, Ofcom, took a large number of decisions regarding, in particular, market reviews, spectrum management and consumer issues but had also to cope with a strong surge in the numbers of disputes and appeals against its decisions. Market players continued to look to Ofcom to set out the details of the approach to regulation of next generation access (NGA) networks, building on the NGA statement published in March 2009.

REGULATORY ENVIRONMENT

Main regulatory developments

On 16 June 2009, the UK Government published the 'Digital Britain' White Paper outlining plans for the UK to enhance the competitiveness of the economy in the transition from analogue to digital technology. Regarding broadband it announced the UK's ambition to ensure at least 2Mbps for all users by 2012 and to support the roll-out of high speed broadband services with a fund to support investment provided by a new levy on end-users. In the area of frequency policy, the White Paper set out complex arrangements involving spectrum caps and various conditions for re-balancing spectrum holdings above and below 1GHz, between existing and new operators, capable of supporting new broadband services. Following the White Paper, in November 2009 the Government submitted to Parliament a 'Digital Economy Bill', which transposes certain of its proposals into national legislation, in particular measures to tackle digital piracy.

There were a number of developments regarding fixed incumbent's Undertakings in the context of its functional separation which is overseen by Ofcom. In particular, Ofcom reviewed the deadlines for completing the incumbent's systems separation and made several amendments to the Undertakings concerning the roll-out of next generation access networks. The details of regulation in this area are, however, yet to come with the expected new analysis of the wholesale broadband and physical access markets. Following the finally concluded appeal procedures regarding the current mobile termination rates, Ofcom launched a discussion on their future regulation. The second round review of wholesale and retail narrowband markets involved several regulatory statements and consultations, in particular on different remedies on the fixed incumbent.

Further to the inquiry carried out in 2008, the Commission launched in April 2009 an infringement procedure against the UK concerning the transposition into UK law of certain EU requirements regarding confidentiality of communications. In October 2009, this procedure entered into the second stage of Reasoned Opinion.

Organisation of the NRA

While Ofcom remains the independent communications regulator, with statutory powers and autonomy from Government, the ‘Digital Britain’ initiative marked a more active role for Government in this area. For example, in spectrum policy the Government is proposing for the first time to use its powers of direction in relation to Ofcom.

The ‘Digital Economy Bill’ proposed to give Ofcom several further functions, including the fight against digital piracy, monitoring the resilience of the telecoms infrastructure and promoting efficient investment in infrastructure. The implications of the latter new duty appeared to raise concerns for some operators who are keen to see Ofcom discharge this new duty in an objective, evidence-based way.

Decision making

The work of Ofcom in 2009 was characterised by a significant increase in both the number of dispute resolution procedures and appeals against its decisions in the Competition Appeal Tribunal (CAT). The latter in particular put a strain on the regulator’s resources. Delays in the decision-making were reported in the case of market analysis of leased lines, which created uncertainty for operators using the regulated wholesale products.

As a result of its thorough consultations, Ofcom may need to change its final decisions from the proposals set out in draft measures submitted to consultation. While such flexibility was appreciated by some operators, it was also challenged in the CAT in 2009. In their appeal submitted in July 2009 against Ofcom’s decision of May 2009 on LLU remedies the appellants also argued that Ofcom’s consultation on this decision was inadequate since it consulted on a range of possible levels for a price control rather than the actual decision that it planned to adopt. In the appellants view, this undermined the ability of respondents to respond to the consultation.

Ofcom’s approach to market analysis is to conduct the national and Community consultations in parallel. This means that, in cases where Ofcom reconsults on a modified proposal, it also launches a new Community consultation. The Commission therefore continued to urge Ofcom to systematically carry out the national consultation before the Community consultation in order to avoid unnecessary double notifications.

In two judgments passed in 2008 (the May 2008 judgment on Ofcom’s determination of mobile termination rates in the period from 2004 to 2007 and the September 2008 judgment on Ofcom’s November 2007 decision on number portability) the CAT addressed also wider issues concerning the way Ofcom works, namely, cost-benefit analysis and dispute resolution procedures. As regards cost-benefit analysis, operators appeared to be more positive than a year ago indicating that Ofcom’s performance has improved in this domain. The May 2008 CAT judgment, which obliged Ofcom to use its dispute resolution powers also to modify, where appropriate, its earlier regulatory decisions, was quoted as one of the main drivers for the increase of the number of disputes. In fact, Ofcom’s dispute resolution intervention was being used as a more convenient and also a cheaper replacement for CAT appeals against market review decisions, which are both costly and limited in time to two months following the adoption of the Ofcom decision. It was also suggested that the general negative

economical climate was another reason for the significant increase in the number of disputes as operators are pressed financially.

Although Ofcom endeavours to respect the four months deadline under the Framework Directive for resolving disputes, it sometimes extends the inquiry phase, which does not count towards this time limit. Ofcom has not so far revised its existing guidelines on dispute resolution, to reflect the relevant CAT judgment of May 2008. Yet, such a revision would be appreciated by the operators who would be better informed as to the information that should be included in their applications, which in turn would allow Ofcom to deal with disputes more quickly.

The number of appeals against Ofcom decisions to the CAT also increased significantly in 2009 as operators felt that they stood a good chance of winning in the CAT. Furthermore, the consolidation in the market was leading to the formation of larger companies that could afford such appeals.

MARKET AND REGULATORY DEVELOPMENTS

The total turnover of the UK communications sector was about € 50 billion and the total value of tangible investments in electronic communications networks was about € 8.1 billion in 2008. According to estimates from operators, their investments were declining in 2009.

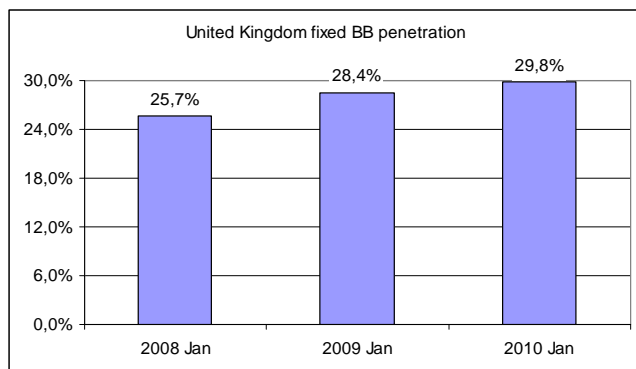
In its third annual evaluation report published in May 2009 Ofcom considered that the fixed incumbent's functional separation, which is implemented through the Undertakings, has had positive effects both for competition and consumers. The main developments in 2009 in this area concerned the incumbent's systems separation and next generation access networks (NGA).

With regard to the former, the original target was for fixed incumbent's network access division's data, applications and hardware to be separated by June 2010. Ofcom postponed the deadline for full physical separation in exchange for the incumbent's commitment to invest in improving some of the wholesale products. Ofcom considered that there were new requirements from operators, which could not have been perceived at the time of the Undertakings, which were higher in priority than some of the other systems developments agreed at the time of the Undertakings. However, some alternative operators considered this to be an unjustified relaxation of the initial Undertakings.

In the area of NGA, further to consultations in 2008, Ofcom issued a Statement in March, which set out the overall regulatory approach to NGA. On the basis of this Statement, in June 2009, Ofcom agreed to a variation of the incumbent's Undertakings concerning FTTC and a consultation was issued on a similar variation for FTTH to allow the fixed incumbent's network access division to install and operate electronic equipment used to provide wholesale active inputs for superfast broadband services.

19.2% of customers subscribed to bundled services in October 2009. Specifically, 11.7% of the population had subscribed to double-play and 7.1% had subscribed to triple-play packages. Bundling is expected to develop further as a result of the withdrawal of retail voice regulation on the fixed incumbent, which was previously prevented from including voice services in bundles.

Broadband



January 2009 and was higher than the EU average of 24.8% in January 2010. However, for the first time in recent years, this UK growth rate of 1.4 percentage points fell significantly below the EU average growth rate of 2 percentage points and was almost two times lower than the growth rate of 2.7 percentage points reported in the UK in 2008.

LLU continued to progress – the Telecoms Adjudicator (OTA2) reported approximately 6.4 million LLU lines at the end of 2009 compared to 5.5 million LLU lines a year ago. The LLU monthly average cost in October 2009 was € 9.06 for fully unbundled lines and € 2.59 for shared access, which is below the respective EU averages of € 9.75 and € 3.53.

The fixed incumbent's share of the retail non-corporate fixed broadband market increased during 2009 (28.3% in January 2010 compared to 25.4% a year ago) but remains nevertheless one of the lowest market shares for an incumbent in the EU and is considerably below the EU average of 45%. Also the market share of resale of the fixed incumbent's broadband offering fell to reach 12.9% in January 2010 compared to 17% a year ago. Notwithstanding this decrease, the UK still remains the market with the largest resale market share in the EU. In terms of mobile broadband, the estimated UK penetration rate by number of dedicated data services cards/modems/keys stood at 6.7%, which was above the EU average of 5.2% in January 2010.

As of January 2010, the UK had one of the largest shares in the EU (78.4%) of fixed broadband lines offering speeds in the 2 to 10 Mbps range, which is currently the most common bandwidth in the EU representing 61.2% of all fixed broadband lines. The share of low-speed lines below 2Mbps was just 1.8%, which is one of the lowest shares for such lines in the EU where they on average represented 15.4% of all lines in January 2010. Finally, the share of high-speed lines above 10Mbps was reported to be 19.8%, which is below the EU average of 23.4%. According to Ofcom's research into fixed-line broadband speeds, the average broadband speed in April 2009 was 4.1 Mbps, while the average 'up to' headline speed advertised by operators was 7.1 Mbps. This research also unveiled that those living in urban areas received significantly faster speeds than those living in rural areas (4.6Mbps compared to 3.3Mbps).

As regards retail pricing of broadband services, Ofcom estimated the average price for residential broadband delivered over copper lines to be around £13.65 a month (excluding VAT) at the end of 2008, which is almost half the average of £23.30 a month for the same service at the end of 2005 (the difference is even greater if these prices are converted into € according to applicable exchange rates, which give approximately € 14 in 2009 and € 34 in 2005).

Market situation

The UK broadband market experienced consolidation in 2009 with one LLU provider (Carphone Warehouse) acquiring another LLU provider (Tiscali). As a result, there are now three fixed broadband providers in the UK with a market share above 20%

The UK broadband penetration rate continued to rise to reach 29.8% in January 2010 compared to 28.4% in

The 'Digital Britain' White Paper announced the establishment of a 'universal service commitment' to provide 2 Mbps to all by 2012. This commitment will be delivered by a mix of technologies: DSL, fibre to the street cabinet, wireless and satellite. The planned public funding of £ 200 million (approx. € 225 million at the end of 2009) will come from the resources reserved but not used for assisting end-users in switching to digital TV. The regulatory 'vehicle' for the implementation of the commitment will be the existing Industrial Development Act. The details of the expected service level, such as minimum speeds, would be determined in tender documents on a regional basis. These tender specifications will, accordingly, determine if mobile operators will also be eligible to bid.

In 2008, the fixed incumbent announced a £ 1.5 billion (approx. € 1.7 billion at the end of 2009) investment plan into next generation access networks over a four year period to connect 40% of UK homes and businesses, i.e. some 10 million premises, of which 25% would be covered using FTTH. In 2009, it revealed the first set of locations, where NGA will be deployed from early 2010, to around 2.5 million UK homes and businesses. The fixed incumbent is under competitive pressure from a cable operator, which is upgrading its entire network (which covers 46% of the UK) to DOCSIS 3.0 providing 50Mbps broadband services.

The 'Digital Britain' White Paper also recognised that public support is needed to ensure universal access to high-speed broadband. It concluded that one third of the UK population could remain served only with the current generation broadband unless a specific subsidy scheme is set up. To deliver at least 90% coverage of next generation broadband access for homes and businesses by 2017, the White Paper proposed to create a Next Generation Fund, based on a supplement of 50 pence (approx. € 0.56 at the end of 2009) per month on all fixed line subscriptions, which is expected to raise £150 million - £170 million a year (approx. €169 - € 191 million at the end of 2009). This new levy would be introduced through the UK finance bill, which should be presented in April 2010.

Regulatory issues

Further to the consultation carried out in 2008, Ofcom adopted in May a decision to increase the charges levied by the fixed incumbent's network access division to alternative operators connecting customers using full LLU (the fee for shared access remained the same) for the period between May 2009 and March 2011. This decision has been appealed to the CAT, which made reference to the Competition Commission (CC) to determine the pricing issues.

Following the Statement on NGA in March, the details of NGA regulation are expected to be addressed in the next market analysis of the wholesale broadband and physical access markets in conjunction with Undertakings that the fixed incumbent has given Ofcom under the Enterprise Act 2002. In 2009, the fixed incumbent did not provide regulated duct access or access to dark fibre. Instead, it was trialling a 'Generic Ethernet Access', which allows operators to interconnect at the Ethernet level in exchanges. Indicative prices for the GEA over FTTH had been published as well as a price range for GEA over FTTC. The alternative providers were critical of the fact that, with this product, the fixed incumbent was moving up the value chain leaving less room for value-added services for alternative operators. Although presented as a product based on equivalence of inputs, criticism has also been expressed regarding this aspect of its provision.

Mobile

Market situation

The mobile penetration rate continued to rise in 2009, thanks to the increased number of devices, to reach 126.2% in 2009, which is higher than the EU average rate of 121.9%. Mobile users were optimizing the use of their inclusive tariff packages, which meant that the volumes were actually up as consumers replaced calls from fixed lines with their inclusive mobile calls. The revenue per subscriber was at the same time decreasing as the retail prices per unit were falling – annual average revenue per mobile user went from € 317 (£ 253.6) in 2007 to € 307 (£ 245.7) in 2008, which is below EU average of € 323 in 2008. According to Ofcom, in 2009 the personal use of mobile phones was for the first time more prevalent than use of fixed lines.

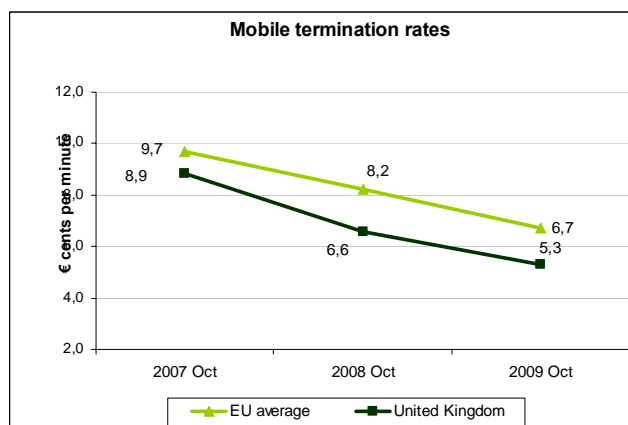
There were some 30 mobile virtual network operators (MVNOs) in the UK with a total 10-15% market share. MNOs introduced a MVNE ('enabler') platform which allows also very small players to become MVNOs at a lower cost through an aggregator.

All five UK MNOs reported progress in mobile broadband. However, with higher usage there is also increasing customer dissatisfaction with the quality of service due to capacity problems. Regarding Mobile TV, there have been limited trials of DVB-H. Some operators launched during 2009 a fixed and mobile product for the small and medium-sized business market, which fuses fixed-line and mobile calls on one number, with one voicemail box.

Following announcements earlier in the year, Deutsche Telekom and France Telecom announced in September 2009 that they would combine T-Mobile UK and Orange UK in a 50:50 joint venture. The new entity's market share will be well ahead of that of the two current mobile market leaders, which had 21% and 20% mobile market share by subscribers in October 2009. The merger is intended to reap considerable cost savings. This reduction from five to four network operators could nevertheless give rise to fears of a lessening of competition, with an adverse effect on the current price competition, which has so far been beneficial for UK consumers (price per minute of mobile voice communication stood at 0.13€ in 2008, which is a significant decrease from €0.17 in 2007 and the same as EU average of €0.13 in 2008). The merger was notified to the Commission under EU merger rules in January 2010.

Regulatory issues

In the course of 2009, the final decisions were reached concerning the current mobile termination rates (MTR) set by Ofcom as from 1 April 2007 to run for four years. Following a process in the CAT and the Competition Commission, which decided on the price control matters, Ofcom modified the MTR glide path to reach a target average charge in 2010/2011 (in 2006/7 prices) for the four established operators of 4.0 pence per minute (down from Ofcom's original



decision of 5.1 ppm) and of 4.3 ppm for the new mobile entrant (down from 5.9 ppm). As of October 2009, the average nominal MTRs had decreased to 5.31 €-cents, one of the lowest levels in the EU and below the EU average of 6.70 €-cents.

In May 2009, Ofcom published a document which assessed six possible options for the future regulation of mobile call termination in the UK as from 2011, ranging from deregulation to “bill and keep” and including also the currently applied cost accounting methodology as well as the methodology proposed in the Commission Recommendation on termination rates. A further consultation on the preferred option is likely to be launched in 2010.

In July 2009, Ofcom issued a second public consultation on the assessment of the mobile sector. Among other issues such as promoting competition, MTRs and reducing the barriers facing new entrants, in this document Ofcom also announced its intention to look more closely into the persistent ‘not-spot’ problem and to work on facilitating better coverage, including emergency roaming. The ‘Consumer Focus’ published an extensive report in October criticizing mobile operators, among other things, about insufficient coverage (not spots) and about the variety of tariff options, which reduce price transparency.

In the area of mobile gateways, by judgment of 10 February 2009, the Court of Appeal upheld the appeal by Ofcom against the CAT judgment of August 2006. The Court of Appeal decided that the current licences granted to UK mobile network operators do not cover the use of commercial GSM gateways and that, in the absence of a specific licence or exemption from licensing, the use of commercial GSM gateways is unlawful in the UK. In light of complaints from GSM gateways providers, the Commission services are considering whether there is an issue of compliance of the UK regulatory framework with the Authorisation Directive following the Court of Appeal judgment.

Roaming Regulation

Mobile operators were offering voice and SMS roaming services in the EU at retail prices in compliance with the price caps established by the amended Roaming Regulation, which entered into force on 1 July 2009. According to operators, voice volumes were declining in 2009 while data roaming volumes were going up. The special roaming tariff packages offered by mobile operators were popular with customers. Some of them provided incoming calls for free and standard national rates for calls made, subject to an additional set-up charge per call.

Fixed

Market situation

There was a decline in fixed voice volumes, which could be partly explained by fixed to mobile substitution. According to the Telecoms Adjudicator (OTA2), at the end of 2009 there were 6.03 million Wholesale Line Rental (WLR) lines and the number of telephone numbers using CPS was 3.73 million (compared to 5.32 million WLR lines and 4.16 million telephone numbers using CPS a year ago). The number of CPS enabled lines was declining at a faster rate, partly as a result of increasingly being substituted for the fixed incumbent’s end-to-end Wholesale Calls product. On the other hand, the introduction of the WLR3 product was still not complete - about 115 providers were using it at the end of 2009 and 90 more were expected to migrate. On the other hand, the big providers, with the exception of the fixed incumbent’s retail division were still using the WLR2 version, which is not fully based on equivalence of inputs.

The fixed incumbent’s market share in the fixed telephony market continued to decline to reach 54.7% in December 2008 by retail call revenue (compared to 57.5% in December 2007) and 47.1% by volume of calls (compared to 51.4% a year ago). By both indicators, this is the

lowest market share for an incumbent in the EU. Charges for call termination on the incumbent's fixed network remain the lowest in the EU in the cases of local and single transit and second lowest in the case of double transit. These charges are two to three times lower than the respective EU average termination charges.

Regulatory issues

In the course of 2009 Ofcom performed the second-round review of the retail and wholesale fixed narrowband services markets, which were first reviewed by its predecessor Oftel back in 2003. In its regulatory statement on the wholesale market review published in September 2009 Ofcom concluded that the fixed incumbent as well as the local fixed incumbent in the Hull area retained SMP in the markets for wholesale exchange lines, call origination and call termination in their respective geographical areas while all providers offering fixed geographic call termination retain SMP in call termination on their own networks. In addition, Ofcom concluded that fixed incumbent no longer had SMP in the wholesale market for local tandem conveyance and transit.

The obligations already in place for the fixed incumbent, which is subject to a full set of remedies, and the local fixed incumbent in the Hull area basically remained unchanged. The previously applied lighter regulatory approach was also proposed in the termination of fixed geographic calls on the networks of other fixed operators, requiring operators to provide call termination on fair and reasonable terms. In addition, Ofcom launched a separate consultation on imposing an additional obligation for these alternative operators to publish their termination rates. In its comments on this draft measure in October 2009, the Commission invited Ofcom to impose also an adequate ex ante price control and a non-discrimination obligation. Finally, towards the end of the year Ofcom also re-consulted on modified proposals concerning the market for wholesale transit services proposing to continue to find the fixed incumbent as having SMP in the single transit market and to impose a range of regulatory remedies on it.

By separate decision, Ofcom imposed specific network remedies on the fixed incumbent as from 1 October 2009 to run for four years to 30 September 2013 in relation to the wholesale call origination and call termination services. The cost model applied in this remedy was not consistent with the recommended approach set out in the Commission Recommendation on the regulatory treatment of termination rates, despite the fact that the end date of the new remedies falls nine months after the end date for transition to the Commission's recommended approach (31 December 2012). Ofcom justified this on the basis of the benefits of a four year control and the problems associated with de-linking the regulation of call termination from the broader remedy package. The Commission services will be following closely the implementation of the Commission Recommendation on termination rates.

Finally, by a second separate decision taken in October, Ofcom imposed remedies for WLR and related services on the fixed incumbent by setting a single control for a 'core' WLR. This new WLR product will be priced at the level of the current cheaper residential WLR and also the price for installing new WLR connections was reduced. In December 2009, these remedies were appealed to the CAT and CC.

As regards fixed narrowband retail services, Ofcom found that the market had developed since 2003 in that the fixed incumbent retained SMP in only two of the product markets (ISDN2 and ISDN30). On the other hand, the local fixed incumbent in the Hull area retained SMP in all retail access and calls markets as there had been no significant competitive developments in that area and its existing SMP remedies were consequently continued. The majority of retail telecoms markets were accordingly deregulated allowing the fixed

incumbent to offer discounted bundles of services including traditional fixed-line calls and line rental for the first time. This move followed the first step of deregulation in 2006 when Ofcom removed its price control obligations for retail voice calls.

In February 2009, Ofcom completed the review of retail and wholesale leased lines markets (the Business Connectivity Market Review (“BCMR”)) started in 2008. Furthermore, in July following a separate consultation, Ofcom published a Statement on remedies for leased lines supplied by the fixed incumbent, which commenced on 1 October 2009 and will end on 30 September 2012. The previous remedies had already expired at the end of September 2008 but during this intermediary period the fixed incumbent had committed voluntarily not to increase charges. The new charges have been appealed to the CAT, which was requested to refer the price control matters arising in this appeal for consideration by the Competition Commission.

Further to identification of changes in the retail low-bandwidth leased lines market Ofcom proposed in 2009 to relax the pricing restrictions applicable to the fixed incumbent as a result of its SMP in this market, in order to allow bespoke pricing and bundling. The Commission considered in its comments that this finding called for a new analysis of the retail market in general.

Broadcasting

Market situation

According to Ofcom, digital television take-up reached 89.2% of households at the end of Q1 2009 delivered by various digital platforms. It increased by 2.1 percentage points year on year which is less than a year ago. While previously the main driver of the increase was the free-to-view digital terrestrial television (DTT) service, now the contributions of DTT, satellite and cable have evened out. In July 2009, DTT was the leading digital television platform used in 37.1% of households, followed by satellite (35.4%), cable (12.4%), analogue terrestrial (10.2%) and IPTV (0.4%). At the end of March 2009, the number of homes able to access to HD television content rose to around 2.3 million (9%), mostly through satellite or cable as well as IPTV.

The coverage of DTT was reported to be 73% of the population while that of analogue terrestrial television was 99% of the population. Digital switchover, which is planned to be completed in 2012, progressed with Exeter in the West Country becoming the UK's first 'digital city' in May 2009.

Regulatory issues

In response to complaints from competing broadcasters, Ofcom continued to work in 2009 to ensure fair and effective competition in pay TV markets, investigating access to premium TV content. A further consultation was published in June setting out details of a proposed ‘wholesale must-offer’ obligation containing a range of regulated prices for channels to allow premium content to be made available on other TV platforms, including IPTV and digital terrestrial broadcasting.

Horizontal regulation

Spectrum management

Directive 2009/114/EC of 16 September 2009 amended the GSM Directive of 1987 providing for the introduction in the 900 MHz band of new wireless services, starting with UMTS services. This Directive, which has to be implemented by the Member States until 9 May

2010, also obliges Member States to examine whether the existing assignment of the 900 MHz band to the competing mobile operators in their territory is likely to distort competition in the mobile markets concerned and, where justified and proportionate, to address such distortions in accordance with Article 14 of the Authorisation Directive.

The UK Government's Digital Britain White Paper proposed that the 900 MHz band will stay in the hands of the two MNOs currently holding rights of use for this frequency band and set out a number of measures for rebalancing spectrum holdings. Subsequently, in October 2009 the Government issued a consultation on a Direction to Ofcom to implement the wireless radio spectrum modernisation programme. On the basis of recommendations from the independent spectrum broker, it is proposed to direct Ofcom to conduct a combined auction of the 800MHz digital dividend spectrum and the 2.6GHz spectrum to be completed before end 2010. If it is postponed beyond 2010, then Ofcom should auction separately the 2.6GHz TDD suitable spectrum (a portion of 50MHz), which can be used for WiMAX.

It has been argued that the forthcoming liberalisation of the GSM spectrum for other uses potentially gives competitive advantage to the current holders of the 900MHz band over competitors in deploying mobile broadband. While competitors could use instead the digital dividend frequencies in the 800MHz band (790-862 MHz), which have similar coverage characteristics, in accordance with Ofcom's decision of 30 June 2009 regarding their release, these frequencies will only become available in 2013, i.e. long after liberalization of the 900 MHz spectrum.

The proposed combined auction would be subject to spectrum caps – a sub-1GHz cap of 2x17.5MHz and a total spectrum cap of 2x65MHz of FDD equivalent spectrum for mobile-suitable spectrum holdings below 3GHz. If the 800MHz spectrum in excess of the sub-1GHz cap is bid for, the current holders must relinquish their 900 MHz spectrum on a 1:1 ratio. Any operator having 2x25MHz or more of liberalised 2G spectrum must also relinquish a block of 2x5MHz of this spectrum into the auction should it acquire any spectrum in the combined auction. All relinquished spectrum will be placed in the auction.

Ofcom published the procedures for the award of spectrum in the 2.6 GHz band (i.e. 2500 – 2690 MHz) as well as in the 2010 – 2025 MHz band already in April 2008 but they were appealed by mobile operators to the CAT as well as to the High Court. The litigation in the High Court was finally closed at the end of 2009 as Ofcom withdrew its decision, which had become superseded by the new Government initiatives. The Commission services are following closely the developments in this area.

Implementation of spectrum decisions

In the course of 2009 the UK notified the implementation of Commission radio spectrum decisions adopted in 2008: 2008/294/EC, 2008/411/EC, Decision 2008/673/EC amending decision 2005/928/EC, Decision 2008/432/EC amending Decision 2006/771/EC and 2008/671/EC. In addition, UK notified the implementation of two further decisions adopted in 2009: Decision 2009/381/EC and Decision 2009/343/EC.

THE CONSUMER INTEREST

Tariff transparency and quality of service

During 2009, Ofcom adopted certain measures to improve tariff transparency for calls to non-geographic numbers in the 087 range, which are used by many UK businesses and public institutions. Revenue sharing between operators and service providers was prohibited for calls to 0870 and communications providers are now required to provide their customers with clear

information about call charges. The use of 0871/2/3 ranges was made subject to more stringent regulation – the remit of premium rate services regulator PhonepayPlus was extended to cover these numbers also. PhonepayPlus will monitor compliance and will also be able to consider user complaints. A further review is nevertheless planned in 2010 on the prices for calls to these numbers (which are at the moment regulated in the case of the fixed incumbent only). There are ongoing termination disputes between originating providers and the fixed incumbent, which now sets its termination rate for these calls depending on the retail rate charged by each operator.

During 2009 Ofcom accredited a price comparison service ‘Billmonitor’ for mobile offerings. Ofcom also re-accredited for the second year two other price comparison sites, ‘Broadband Choices’ and ‘Simplifydigital’, which allow consumers to search for cheaper deals in fixed line, digital TV and broadband services. Operators indicated that these calculators are becoming increasingly popular among consumers. On the other hand, in 2009 Ofcom withdrew regulations requiring fixed voice providers to run the ‘TopComm’ website for comparing quality of service after having ascertained that this service was not delivering the expected results and had not been taken up by the consumers.

In 2009 Ofcom also carried out a broadband speeds survey comparing the six largest players. Some operators suggested that, for such a survey to be more objective, it should also tackle other relevant aspects such as customer service. In this area, Ofcom carried out a research exercise to consider consumers’ needs for quality of service information. In its December 2009 consultation on providers’ complaints handling and Alternative Dispute Resolution (ADR) procedures, Ofcom consulted on a number of options for providing consumers with comparative information on providers’ handling of consumers’ complaints.

In March, the Mobile Broadband Group, which brings together five UK MNOs and the two largest MVNOs, issued principles for marketing mobile broadband. Ofcom monitors how operators are meeting these principles. It also plans to carry out a project in 2010 assessing the network quality of mobile broadband services.

Universal Service

In December 2009 the Court of Appeal overturned the CAT judgment of November 2008, concerning the lawfulness of the current Universal Service Condition 7. USC7 currently obliges the fixed incumbent as universal service provider 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. Although the Court of Appeal concluded that USC7 was prohibited by the Universal Service Directive and other directives, the Court considered it necessary to obtain a preliminary ruling from the European Court of Justice before giving judgement. In 2009 Ofcom launched a review of the current Universal service obligations and on sharing the cost of providing Universal Service and expects to publish a consultation in 2010. These obligations are currently imposed on the fixed incumbent except in the Hull area where local fixed incumbent operator is the US provider. These two operators also bear the cost of US.

Users' access to the Internet and network management

Net neutrality was not reported to be an issue at the moment. The approaches to mobile VoIP differed among the MNOs – while some applied differentiated pricing depending on whether VoIP was allowed or not, others charged no extra fees.

The ‘Digital Economy Bill’ that Government submitted to Parliament in November 2009 provides that copyright owners may notify Internet operators of suspected infringements,

which operators then have an obligation to pass on to the subscriber. The process will be underpinned by an ‘initial’ Code either developed by stakeholders and approved by Ofcom, or in the absence of a stakeholder code, one developed by Ofcom. This code will set out the procedure of notifications and their content. Furthermore, the Bill provides that the Secretary of State may impose technical obligations on Internet service providers, which would then be implemented through another ‘technical obligations’ Code made by Ofcom. The measures include limitations on the speed or capacity of a broadband connection, preventing access to certain material, suspending the service altogether, or limiting the service in any other way. The Bill already lays down certain safeguards for users, including the right to appeal to the First-tier Tribunal. However, the details of the procedure will have to be set out in secondary legislation, which will need to comply with the newly adopted EU law requirements concerning suspension of access to Internet.

Number Portability

Following the CAT judgment of September 2008, which set aside Ofcom’s decision to implement a recipient-led and near-instant process for porting mobile numbers as well as direct call routing supported by a central database to all ported numbers (fixed or mobile), Ofcom issued in August 2009 two new consultation documents on number portability. The first document proposes two options for changing the mobile porting process, including donor-led and recipient-led options and either a one-day or two-hour process. The second consultation sets out proposals for introducing direct routing for mobile voice calls to ported mobile numbers. The current indirect call routing system requires all communications providers to establish bilateral arrangements for routing calls to ported numbers.

Generally there are neither wholesale nor retail charges in the UK linked to setting up individual subscriber requests to port mobile numbers. However, due to the indirect routing arrangement the gaining provider pays porting conveyance charges to off-set the additional costs in onward routing of calls to ported-in numbers. The time limit for the porting of mobile numbers between networks is two days and the industry-agreed timeframe for issuing porting authorisation codes (PACs) by the donor operators, which are necessary to launch the porting process under the current donor-led mobile number portability system, is two days. Porting of fixed numbers takes no more than 1.5 days, while the entire switching process, including a period for the service provisioning and consumer validation (anti-slamming) processes, varies between 4 and 25 days, depending on the type of transfer and installation.

According to research commissioned by Ofcom in the framework of the above-mentioned consultations, 71% of mobile customers polled regarded mobile number portability as important when switching networks, yet only 45% of those who had switched networks had actually ported their number. Although Ofcom research also showed that, amongst those who had ported their number, 80% were satisfied with the process, this data suggests that there is room for greater uptake of number portability in the UK. In 2009, Ofcom launched a pre-enforcement programme to monitor complaints from customers concerning the mobile porting process, in particular the possible excessive ‘save’ activities and misinformation by donor operators in the process of providing PACs, which may act as a barrier to number portability.

Ofcom’s review of number portability is expected to be completed in 2010. In 2010 Ofcom also plans to consult on the consumer switching process that exists across different industries. At the moment, switching broadband provider is a donor-led procedure while switching fixed voice service provider is a recipient-led process.

The Commission services will follow carefully the outcome of these activities.

Consumer complaints

Further to the consultation carried out in 2008, Ofcom adopted new rules concerning alternative dispute resolution (ADR) schemes, reducing from 12 to 8 weeks the time that the consumer must allow his or her communications provider to resolve a problem before taking the complaint to an ADR scheme. In addition, following a new market research, in December 2009 Ofcom issued a new consultation document with proposals for changes in regulation to secure improvements to consumers' experiences of making complaints and seeking redress.

In 2009 Ofcom introduced a new General Condition 23 in relation to the sale and marketing of mobile telephony services. Its purpose is to fight mobile mis-selling and it provides Ofcom with powers to take enforcement action against mobile service providers if they do not take sufficient action to prevent dishonest, misleading or deceptive conduct by their in-house sales channels or by retailers selling services on their behalf. On the same day Ofcom launched a monitoring and enforcement programme to ensure compliance with the new requirements.

Regarding fixed line telephony services Ofcom also introduced in 2009 a new General Condition 24 explicitly prohibiting certain sales practices, including mis-selling and slamming where customers are switched without their informed consent. In addition, an increase was observed in systems problems which lead to the wrong line being switched when a consumer seeks to change supplier or move home meaning that consumers may find themselves with a different supplier or even suffer loss of service. Via the Office of the Telecoms Adjudicator (OTA), Ofcom therefore launched an initiative to ensure systems improvements to reduce the harm from this occurrence. The OTA was also working with industry, on behalf of Ofcom, to establish a process for customers to be restored to their original service and contract, quickly and without cost, when they have been transferred in error. Ofcom publishes regular Consumer Experience reports. The fourth annual report was published in December 2009 and also evaluated the effectiveness of Ofcom regulatory activity to better serve the interests of consumers.

European emergency number 112

There were two noteworthy developments in this area during 2009. First, in October it became possible for the UK mobile users to call the emergency service numbers 112 and 999 from another network if their own network is unavailable and an alternative provider has coverage. Second, in September, an emergency SMS trial was started. The potential beneficiaries of this service were invited to register to be able to send a text message in an emergency. The system involves a relay assistant who will speak the SMS message to the emergency service, then type their reply which is converted into a SMS message and sent back to the sender.

According to the Eurobarometer Flash survey (February 2010), only 8% of respondents in the UK knew that they could call emergency services across the EU by using 112, which remains one of the lowest awareness levels within the EU where on average 25% of respondents know 112 as the EU-wide emergency number.

Harmonised numbers for harmonised services of social value (116)

Further to the consultation in 2008, Ofcom set out its general approach to implementation of '116' numbers in the UK in February 2009. A comparative selection process was developed to assign each 116 number to the most appropriate partnership comprised of the service provider and its chosen communications provider. The service providers for the initial three '116' numbers: 116000 'Hotlines for missing children'; 116111 'Child helplines'; and 116123

'Emotional support helplines' were selected in October 2009 with services expected to be launched on the numbers in 2010. These numbers were designated by Ofcom as 'free to caller' in the Numbering Plan meaning that there will be no charge irrespective of how the call is made.

ePrivacy

On 14 April 2009 the Commission launched an infringement proceeding against the UK concerning incorrect transposition in UK law of EU law requirements concerning confidentiality of communications provided in the ePrivacy Directive 2002/58/EC and the Data Protection Directive 95/46/EC concerning user consent, sanctions in case of infringements and independent authority to supervise interception activities. On 29 October, further to analysis of the UK authorities' response to the letter of formal notice, the Commission proceeded to the next stage of the Reasoned Opinion.

There is no legal requirement for UK mobile customers using pre-paid cards ('pay as you go' customers) to register with their operators.