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Competition and Markets  
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4 October 2005

Dear Mr Parsons

### **Ofcom Review of Alternative Dispute Resolution Schemes**

O2 (UK) Ltd ("O2 UK") welcomes the opportunity to comment on Ofcom's review of alternative dispute resolution ("ADR") schemes<sup>1</sup>.

O2 UK is absolutely dedicated to providing an excellent service to its customers and has invested significant resource into this area. O2 UK believes that improving its customers' satisfaction with its service is a means of distinguishing itself from its competitors. An integral part of this approach is dealing effectively and efficiently with any problems that customers report. We see our ADR scheme, Otelo, as an important part of our complaints handling procedure - O2 UK and Otelo have developed a very good working relationship. We therefore have a keen interest in Ofcom's policy in this area.

This letter sets out our main thoughts about the review and recommendations. The attached Annex provides our comments on the individual recommendations. We also met with Jackie Caspary and Rosalind Stevens-Strohmann in September and discussed the review.

### **Existing ADR schemes**

O2 UK is pleased to note that Ofcom does not propose to amend the conditions of its approval, or to withdraw approval of Otelo or CISAS.

### **Complaints handling procedures**

We note the research that demonstrated that the vast majority of consumers wishing to make a complaint start the process at the right point. However, some consumers erroneously refer their complaints to Ofcom at some stage. Ofcom appears to suggest that

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<sup>1</sup> Ofcom Review of Alternative Dispute Resolution Schemes, Report and Draft recommendations. Ofcom, 27 July 2005



this is a problem that merits intervention in the form of additional obligations to notify consumers of complaints handling procedures. It is suggested that ADR schemes monitor and police these obligations.

O2 UK is not convinced of the policy prescription. Although O2 UK complies with the good practice proposed by Ofcom (our complaints handling code is on our website and we provide information about our complaints handling procedure on bills and in “welcome packs” that we provide to new subscribers) we do not find it surprising or worrisome that some consumers contact Ofcom about their complaints. This is understandable, given Ofcom’s high profile. We understand that in these circumstances, Ofcom advises consumers how to proceed with complaints, so we do not see incorrect referrals as causing significant detriment. In any event, over time, as consumers’ understanding of the role of Ofcom develops, the “problem” might be expected to diminish.

The problem with adding regulatory burdens to tackle the issue is that they will involve a cost, which has not, it seems, been assessed. Further, it is not clear that the Ofcom’s proposals would actually succeed in practice – for instance, if consumers were advised of the full complaints handling procedure (culminating in a reference to an ADR scheme) at the outset, they may very well incorrectly refer the matter to the ADR scheme immediately. Ofcom notes that this sort of early inappropriate referral is already prevalent.

Of course, if the customers of a particular Communications Provider are contacting Ofcom disproportionately, there could be a problem that does merit addressing (for instance, there may be a training need for customer service staff). Ofcom should address this on a case by case basis, with the Communications Provider concerned.

### **The effect of competition**

O2 UK is disappointed that Ofcom has not considered in its review the effects of dynamic competition in the mobile market as a means of delivering improved performance in the area of complaints handling. The recommendations Ofcom makes do not appear to distinguish between the fixed and mobile markets and therefore do not take account of the vigorous competition in the latter. We believe that this is a major oversight.

The UK mobile market has been found to be effectively competitive by Ofcom. There are five major network operators and a number of substantial and well established service providers, all competing vigorously. Customers switch providers frequently and with ease.

There is plenty of empirical evidence that mobile providers are seeking to improve their “customer satisfaction” performance as a means of retaining customers. An important part of this is addressing customers’ complaints and queries quickly and efficiently.

Indeed, earlier this year, O2 UK implemented its “customer plan” programme. The decision was taken to restructure O2 UK staff such that 75% of employees should be customer facing. This resulted in plans to increase dramatically the number of customer facing staff, by 2000, including the opening of a new call centre in Glasgow, together with a headcount reduction amongst O2 UK non customer facing staff.



O2 UK has also invested heavily on staff training and systems to track complaints and queries. There has been a conscious effort to promote the customer experience in all aspects of the development and provision of the O2 UK services; to change the prevailing “culture”. This has manifested itself throughout the organisation – earlier this year, O2 UK appointed its first Customer Director.

The Customer Plan programme is designed to ensure that customers receive an excellent service and that customer satisfaction scores increase as a consequence, as a means of improving O2 UK’s customer retention performance<sup>2</sup>.

O2 UK is firmly of the belief that it is the competitive dynamic and the ability for customers to “vote with their feet” that results in improved customer service in the mobile sector. This will include the way in which complaints are handled. Put simply, if customers feel that their complaints are dealt with unsatisfactorily, they can, and do, take their business elsewhere.

### **Impact Assessments**

O2 UK also notes that the recommendations do not appear to have been subject to an Impact Assessment. This is particularly surprising given that six days before publishing the review, Ofcom published “Better Policy Making<sup>3</sup>”, in which it undertook to assess, properly, the impact of its policy proposals. The statement provides the basis for Ofcom’s work, for instance:

“One of our key regulatory principles is that we have a bias against intervention. This means a high hurdle must be overcome before we regulate.”<sup>4</sup>

And, about undertaking Impact Assessments:

“To be effective, the process of doing an Impact Assessment should begin right at the start of the project.....An Impact assessment should therefore be a core part of the policy-making process, not a bureaucratic add-on.”<sup>5</sup>

O2 UK agrees wholeheartedly with this approach. It is absolutely right to intervene only where necessary and in a way that best ensures a net positive outcome.

It is therefore extremely disappointing to note the lack of an Impact Assessment in relation to the recommendations in the review of alternative dispute resolution schemes.

In the absence of a proper Impact Assessment, O2 UK is not sure what benefits Ofcom expects the recommendations to deliver, and is concerned that some of them would involve considerable cost. Accordingly, we urge Ofcom to consider its approach afresh and to subject its recommendations to an Impact Assessment.

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<sup>2</sup> see [http://www.o2.com/media/press\\_releases/press\\_release\\_625.asp?archive=yes](http://www.o2.com/media/press_releases/press_release_625.asp?archive=yes) and [http://www.o2.com/media/press\\_releases/press\\_release\\_332.asp?archive=yes](http://www.o2.com/media/press_releases/press_release_332.asp?archive=yes), for instance

<sup>3</sup> Better Policy Making, Ofcom’s approach to Impact Assessment. Ofcom, 21 July 2005

<sup>4</sup> Paragraph 1.1

<sup>5</sup> Paragraph 1.6



I hope you this helpful. Please call me if you wish to discuss the any of the issues raised.

Yours sincerely

Lawrence Wardle  
Regulatory Manager



***Proposed Recommendation 1***

*Communications providers must improve complaints handling procedures and customer awareness of ADR schemes. Communications providers must make customers aware of their complaints code of practice as soon as a complaint is received and ensure that the codes are easily accessible ideally through the company website and/or on customer invoices.*

O2 UK already does provide its complaints code of practice on its website, and sets out part of its complaint handling procedure on its bills. Accordingly, we believe that we already comply with this recommendation.

However, Ofcom should not under-estimate the problem of advising customers of the full complaints handling procedure, and then customers using that knowledge to seek to bypass the intermediary steps and refer the matter straight to the ADR scheme. O2's experience accords with Ofcom's finding that this already happens, and frequently. Ofcom's proposals could make this situation worse. In our view, it is better to reveal only part of the complaints handling procedure on the back of bills, to avoid approaches to ADR schemes that would be outside the terms of reference. Once the complaint nears the end of the Communications Provider's complaints handling procedure, then it is, of course, correct for the customer to be advised of the relevant ADR scheme.

In determining its policy on the provision of information to customers about complaints handling procedures, Ofcom must recognise that a Utopian vision of customers negotiating perfectly and in the first instance, complaints handling procedures, on all occasions, is unlikely ever to be realised in practice.



### **Proposed Recommendation 2**

*Communications providers should use a standard definition of complaint, to ensure accurate recording and monitoring of progress. Front line staff should be trained adequately in company complaints handling procedures. Communications providers should not direct enquiries to Ofcom nor prematurely to an ADR scheme.*

O2 UK is concerned that the imposition of a standard definition of complaint and a duty to record them could be very costly. Furthermore, in the absence of an Impact Assessment, we simply do not see what benefits this would produce. We accept that it would better able Ofcom to make comparisons between different providers, but of what practical benefit is this?

O2 UK believes that Ofcom should have far more faith in the dynamic competitive market for mobile services in the UK to provide consumers with a good level of service, including the proper handling of complaints.

O2 UK agrees that Communications Providers should not refer complaints incorrectly to Ofcom or an ADR scheme. However, where this does happen, we would expect Ofcom to discuss the matter with the Communications Provider and encourage it to take remedial action. There may also be grounds for enforcement action. We do not see the existence of inappropriate referrals as grounds for introducing wider obligations on all Communications Providers – that would be disproportionate and not objectively justified.

### **Proposed Recommendations 3 and 7**

*To help ensure implementation of recommendations 1 and 2, Ofcom will work with the ADR schemes to develop best practice for communications providers as part of their conditions of membership of an ADR Scheme.*

*Schemes should take action against communications providers who fail to comply with their rules, including best practice on complaints handling; and/or who fail to abide with the scheme's decisions. Schemes should alert Ofcom of any potential problems that may prove detrimental to consumers.*

As a matter of principle, if Ofcom believes that the present regulatory duty to provide and comply with a code of practice for complaints handling is inadequate, it should seek to deal with the matter in a review of the relevant General Condition. Similarly, if Ofcom believes that there is a compliance problem, then it should investigate the matter. We do not believe that it is right to implement what could amount to additional regulatory duties “through the back door” by amending the rules of ADR schemes. In addition, the monitoring and compliance work that this would force ADR schemes to undertake would push up costs and, therefore, membership fees. O2 UK would be interested to know whether Ofcom has considered the scale of such costs.



#### **Proposed Recommendation 4**

*Ofcom considers ADR Schemes should publish Key Performance Indicators covering staff competence, timeliness of decision making and overall customer satisfaction. In addition the Schemes should publish regular reports showing the breakdown of complaints received.*

O2 UK believes that this recommendation should similarly be subject to an Impact Assessment.

#### **Proposed Recommendation 5**

*The Schemes should work with communications providers to improve awareness of the service amongst those groups who are currently under-represented. Otelio should continue to monitor socio-demographics of complainants as an integral part of consumer satisfaction surveys. CISAS should commission independent consumer satisfaction surveys as soon as possible. Action should be taken to ensure that ADR is equally accessible to all.*

O2 UK shares Ofcom's concern that ADR schemes should be made available to all users of electronic communications services. To this end, Otelio has developed its scheme to be accessible, and O2 UK's consumer code of practice (which incorporates the complaints handling code) benefits from the Plain English Campaign's crystal mark.

However, there is only so much Communications Providers and ADR schemes can reasonably be expected to do. As Ofcom itself notes, there is nothing unusual in the fact that some socio-demographic groups use electronic communications ADR schemes to a greater extent than others; the same is true of other industries' ADR schemes. This rather suggests that the different levels of use of ADR schemes amongst various socio-demographic groups reflects the different characteristics of those groups. It seems disproportionate to expect communications providers to address these wider social issues, beyond what they do to comply with existing regulatory and statutory requirements.

O2 UK would be interested to know what Ofcom has in mind in relation to "improve awareness of the service amongst those groups who are currently under-represented" and would be interested to know whether an Impact Assessment has been carried out.