Ofcom’s final statement—mobile call termination market review 2018–21

17/05/2018

TMT analysis: After a decades-long process, telecommunication lawyers now have a clear picture of the status for mobile call terminations (MCT). Daniel Preiskel, senior partner at Preiskel & Co, explains the key takeaway points from the Office of Communications’ (Ofcom) statement—advising that this latest MCT review largely represents a final punctuation of major changes already undertaken.

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Ofcom has published a final statement on their mobile call termination market review 2018–21, which outlines Ofcom’s regulation of mobile call termination provided by each mobile provider active in the relevant markets.

What are the major decisions set out in these reviews?

I would be reluctant to overhype what are quite minimal changes compared with those that came before it. The majority of the hard work in this process of reducing MCTs had already been carried out over time since the initial reviews way back in the 1990s, by Ofcom’s predecessor, Oftel. Successive reviews since then, have seen a call price termination cost fall from approximately 13 pence per minute (ppm), to 0.5 ppm taking us out of a situation where operators were making considerable profits in setting high termination costs for calls to numbers on their mobile networks. Ofcom should be applauded for this achievement, and any future changes are also likely to be incremental.

The new rates are now also applied to all mobile virtual network operators (MVNOs) as well as the four major mobile network operators, which had typically functioned at a higher price. The rate represents a cap rather than an average, in contrast with earlier rates set by Ofcom, which had functioned using an average price. This enabled mobile network operators (MNOs) to use what was known as ‘flipflopping’ to set a higher rate during peak times, while keeping within the average rates set by Ofcom. The use of a cap, moreover, has removed the incentive for this ‘flipflopping’ which used intricate mathematical calculations to adhere to the average prices, while maximising the charges being made. However, it should be acknowledged that the use of the cap has also been in place for some time, with no change as a result of this final statement review.

this is a hugely important piece of regulation by Ofcom, but this step seen within that wider process since the 1990s is of less incremental significance.

What are the practical implications for communications providers? What future impact will these decisions have?

The previous situation and the existence of high MCT costs ensured a constant transfer of significant revenue from the smaller MNOs and MVNOs to rivals. When, for example, 3UK was a new operator in the market, due to MCTs it was effectively paying millions of pounds in fees to rival MNOs for calls made to their networks—a galling process for competitors (and their investors) to the largest MNOs and also a problem in terms of the high rates for calling mobiles for customers. It is not surprising then that 3UK were a lead advocate for change, especially in the early days.

The industry seems to understand that we are now in the final phase of action on this issue. MCTs have reached an acceptable rate and there is more or less an equilibrium between the four major MNOs, with no one any longer being the aggrieved party paying out disproportionate amounts to its competitors.

We now see a situation where no MVNO can charge what it likes for MCTs. There is a recognition that the regulatory process has led the market to a healthy outcome. Also that there will be a continuing acceptance of the role it can play, even if the larger MNOs have, during the course of the process, witnessed a steep loss of revenue as a result of MCTs being addressed, which they argue impacts upon their ability to invest in network improvement.

The position that MCTs should be standardised regardless of from where the calls originate is also welcome, for the sake of certainty. If the argument for MCTs only to apply to calls originated within the EU had been accepted then, in my opinion, this would have likely led to disputes between operators down the line.

What is the impact upon consumers?

The changes have opened a great deal of space for innovation. The huge advantage of having low MCTs is that new operators do not have to pay such vast sums to their competitors. Low MCTs also address the old failing by which a provider would offer customers an attractive package, only to see its overall value deteriorate once calls to other mobiles and the associated MCTs had been factored in. With MCTs relatively negligible, the field is open for companies to compete on service, innovation and quality instead—a very encouraging development for any market, and indeed for consumers. Bundles and other packages can be more flexible on account of not having to factor in a potentially crippling exposure to the cost of calling mobiles.

Interviewed by Julian Sayarer.

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