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Written evidence from the Mobile Broadband Group to the National Assembly for Wales's Legislation Committee No.5 in respect of:

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED LEGISLATIVE COMPETENCE ORDER IN COUNCIL ON THE WELSH LANGUAGE

1. The Mobile Broadband Group ("MBG", whose members are the UK businesses of O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to provide comments on the draft Legislative Competence (Welsh Language) Order 2009. The MBG's members serve 96% of mobile customers in Wales¹.

Summary

2. The MBG strongly urges that 'telecommunications services' be deleted from the Legislative Competence Order on the following grounds:
 - The development of communications services is vital to the economic and cultural future of Wales (and the rest of the UK). This is a central tenet of the Government's Digital Britain strategy. Limited scarce resources should be prioritised towards work that customers value most highly, such as extending mobile broadband coverage.
 - The LCO has a potential impact on telecommunications customers, policy and regulation beyond Wales. We strongly believe that telecommunications policy and regulation should remain in the purview of the UK Government and Ofcom.
 - The LCO allows only for the treatment of the Welsh and English language on the basis of equality. Unless the LCO is amended to allow for some qualification of this absolute requirement, the measures that could subsequently flow would be disproportionate.
 - No impact assessment has been carried out. Although the LCO confers only competency, the impact that would flow from any measures as a

¹ Page 80, Ofcom Communications Market Report – Nations and Regions, May 2008

consequence of the LCO are of sufficient magnitude in relation to telecommunications services, that the Competence Order should not be granted without an impact assessment.

- The potential impact of the LCO and consequent measures, for all sorts of practical reasons, set out more fully below, would be very costly to implement and will work against the interests of consumers in Wales.

Market allocation of scarce resources

3. All telecommunications service providers, including the mobile operators, operate with limited resources for capital investment and have to make choices about how to spend those resources. At present, the clear priority being set by customers for mobile operators is to improve the coverage of third generation (3G) mobile broadband.
4. Of the UK nations, Wales already has the highest rate of adoption of mobile 3G services (20% of users) and so this is clearly a service that is valued in Wales². Customers are indicating that it is much more important to them to have access to the best possible telecommunications services rather than have services provided bi-lingually.
5. It is critical to the economic and cultural development of all UK regions that the provision of advanced services such as mobile broadband progresses as quickly as possible. This is a central tenet of the Government's Digital Britain strategy. Diversion of resources to the provision bi-lingual services in Wales would arrest this progress and not give net benefits to Wales.
6. In any event it is recognised that it is far more efficient for the supply of new services and new ways of delivering those services to be demand led – in other words determined by consumers setting market priorities through the choices they make. This also gives companies the freedom to differentiate their offering by responding to the specific needs of specific market segments in a proportionate and practical way.
7. Indeed voluntary action to supply certain service elements bi-lingually is already happening. For example, some operators have produced bi-lingual signage in some Welsh stores and staff have started to wear badges that identify Welsh speakers, so that in store advice can be offered in Welsh, if the customer so wishes.
8. The Welsh Language Society has dismissed these efforts as tokenism. The MBG completely disagrees. These initiatives represent a significant investment in physical assets and training that promote, in a proportionate and practical way, bi-lingualism in Wales. We feel that encouragement of voluntary action would ultimately be much

² Page 76, Ofcom Communications Market Report – Nations and Regions, May 2008

more beneficial for the language, telecommunications companies and their customers than legislative action.

9. All the members of the MBG are committed to the Welsh market. However, as well as selling services directly to customers, MBG members sell through a diverse network of independent retailers.
10. The MBG notes that the LCO, as set out in *Matter 20.1 (h)* applies to “persons providing the public with the following kinds of services or with other services which relate to any of those services”. In other words, with respect to telecommunications alone, the LCO could extend its remit to a significant number of businesses. The MBG argues that the cost of providing services bi-lingually would deter many independent service providers from competing in the Welsh market at all, very much to the detriment of consumers in Wales.

UK telecommunications policy and regulation should remain in the sole remit of the UK Government and Ofcom

11. There are approximately 73 million active mobile subscriptions in the UK, with 84% of households having the use of at least one mobile phone. We are progressing to the point where roughly 40% of mobile users have more than one device – perhaps one for work use and one for personal use, or one device primarily for voice and one primarily for data usage (such as e-mail and Internet browsing). About 65% of subscribers use prepaid subscriptions and 35% of customers are on monthly paid contracts.
12. All the major UK mobile operators are set up to serve an itinerant customer base on a UK wide basis, as opposed to on a region by region basis. From our perspective, bi-lingual provision would mostly involve the duplication of oral and written communication for 1% of the UK customer base that potentially could use the Welsh language as opposed to the 20% of the Welsh customer base, as we do not segment networks and services provision along the boundaries of the UK’s nations.
13. Moreover mobile operators are regulated on a UK wide basis. The Universal Service Obligation is set, subject to European Directives, by the UK Government and General Conditions of Entitlement (to operate a network) are established and regulated by Ofcom. We explain below that any bi-lingual requirements would have implications for UK wide telecommunications, in that the UK Government and Ofcom could not propose regulatory measures without taking account of the impact of and proportionality of any concomitant bi-lingual requirements.
14. It is not clear what the Welsh Assembly’s expectation is with respect to the significant extra costs that would arise from bi-lingual provision – i.e. whether costs would be shared by all UK consumers, all Welsh consumers or just those taking advantage of Welsh language services. In any event, it is likely that it would be extremely difficult

to recover costs in a rational way from just the Welsh consumers. The most likely outcome is that costs will be borne across the UK customer base.

15. Thus it is not appropriate to devolve powers, in relation to telecommunications services, to one of the UK's nations when the implications have a UK wide impact.

16. With respect to regulation, the General Conditions place a number of regulatory obligations on telecommunications service providers. For a number of these obligations it will be very costly to supply services bi-lingually. Take for example the following requirements: access to directory inquiries, access to a text relay service for deaf customers, access to ADR (alternative dispute resolution) and access to 999/112 services. Looking at each in turn in more detail, placing a regulatory obligation to provide access to a Welsh language Directory Enquiry (DQ) service would be unnecessary. The provision of DQ in the UK is now competitively supplied and customers are free to choose the DQ service they use and Welsh language DQ is available on 118404, provided independently of mobile operators.

17. With respect to services for deaf customers, mobile operators have, since 2004, been required to provide access to a text relay service – a system run by BT and manned by the RNID that converts speech into text and vice versa. In the last four years a negligible number of people have made use of the service. Deaf customers far prefer to use text messaging which provides an almost identical service without the need for an intermediate text relay operator. Again, the MBG feels that it would not be proportionate, bearing in mind the very low demand for even a service in English, to require this service to be supplied bi-lingually. There would be significant costs of setting up and maintaining the service, even if wasn't used.

18. A further regulatory requirement is for telecommunications providers, including mobile operators, to provide access to an ADR scheme, whereby customers that have a dispute with their provider can, on reaching deadlock, refer their case for independent resolution. There are currently two principle schemes: Otelo and CISAS. Both are based in England. Our understanding is that certain aspects of these services are available bi-lingually but not on an equal footing. The mobile operators would not be able to comply with this aspect of their regulatory obligations without incurring considerable expense.

19. Mobile operators are also required to provide access to 999/112 emergency services. Approximately 15 million calls per annum are made from mobile networks in the UK to the emergency services. The key objective for an emergency call is to handle it efficiently, establish location of the caller as quickly as possible and pass the caller to the appropriate emergency service. There is no evidence that the existing 999/112 service is compromised by an inability to handle calls for customers in Welsh. Indeed, there is a risk that the service could be compromised by having to insert a process that requires the customer to choose which language to use. In an emergency situation, this is very much a secondary consideration.

20. However, the mobile operators are planning to make a significant but different investment in the 999/112 service. As a result of a suggestion from the Welsh Advisory Council on Telecommunications, the mobile operators have recently launched a project which will ultimately lead to customers being able to make an emergency call on any mobile network. This investment is expected to be particularly beneficial to less populated regions of Wales, where there may only be network coverage from one or two networks as opposed to all five. This is potentially a significant enhancement to emergency service provision in rural Wales.

The LCO gives no room for flexibility

21. Clause 35 of the Government of Wales Act 2006 states that “*the Assembly must, in the conduct of Assembly proceedings, give effect, so far as is **both appropriate in the circumstances and reasonably practicable**, to the principle that the English and Welsh languages should be treated on a basis of equality.*”
22. However, the draft LCO at 20.1, does not appear to give the Assembly the power or flexibility to act reasonably or appropriately. The MBG urges that such concepts are adequately reflected in the LCO at 20.1.

No impact assessment

23. The draft LCO states that a regulatory impact assessment has not been prepared for this Order as no impact on the private sector is foreseen. The MBG recognises that the LCO, as such, does not set a date by which bi-lingual services would have to be introduced.
24. Nevertheless, without being specific, it clearly sets out that telecommunications services and related businesses will have to introduce bi-lingual facilities. As the MBG argues in this submission, there will implications for service providers and the regulators throughout the UK.
25. It would be wholly inappropriate and contrary to regulatory best practice to pass the LCO without the preparation of even an outline impact assessment.

Practical implications will lead to significant extra costs and will work against consumers in Wales

26. In the last twenty years or so mobile networks have evolved from simple voice provision into highly complex multi-media platforms for providing voice & text service, picture messaging, Internet browsing, e-mail, video on demand and mobile payment to name but a few. The network and accompanying billing system is a very complex organism. The cost, risk and time involved in making changes in one language, never mind two, is very high.

27. In order to give more detail on the practical difficulties involved, this paper breaks the topic down into the following areas: network coverage, retail, international roaming and customer services.

Network Coverage

28. Mobile networks are basically configured on a UK-wide basis. The radio spectrum is licensed and allocated by the UK authorities. Network resilience is configured for the UK (i.e. if one switch or switching centre is incapacitated, traffic will be routed through another). Messages sent to customers are sent in English. For example, on a misdial, an oral message such as *'the number you have dialled has not been recognised, please try again'* is delivered through to the handset. Or, on receipt of a voice message, the voicemail service delivers *'A voice message is waiting for you'* or similar.
29. No detailed work has yet been done on how bi-lingual obligations would actually be met. However, roughly speaking the choices might be: a) the customer chooses which language he or she wants to use to communicate with the network, b) the network would communicate to customers bi-lingually within Wales.
30. Thus, under option a), if the customer chose the Welsh language, the network would deliver relevant service messages in Welsh. However, it should be noted that the customer is mobile and thus liable to stray beyond the physical boundaries of Wales, requiring the network to be configured across the UK to deliver messages bi-lingually. (It would probably be even more complicated to deliver messages to that customer in Welsh in Wales and in English in other UK regions). Under b), the network would deliver service messages in both languages, to both Welsh customers in Wales and other nationals visiting Wales. Generally speaking customers do not like overly lengthy network messages and may object to the information load being doubled.

Retail presence

31. Mobile devices and subscriptions are sold to customers through own branded stores, independent chains such as Carphone Warehouse and Phones4U or through a network of thousands of small independent dealers. Sales can either be through physical stores or on-line.
32. Unlike the physical mobile network, it is more straightforward to design the physical stores based in Wales to offer bi-lingual signage and information. And indeed great efforts, as mentioned above, have been made in recent years to improve this aspect of the service on a voluntary basis.
33. There are nevertheless limitations to what is practical. Many customers like to change their handsets regularly, on average every two to three years. Approximately

26 million handsets are sold in the UK each year (and 200 million throughout the EU). There are literally dozens of models on the market at any one time and retail stores only keep a small stock of a limited range on site.

34. The market is led by a few global manufacturers such as Nokia, Sony Ericsson, Motorola, Samsung, LG and Apple. It is highly competitive and they all seek to derive economies of scale by managing inventory, as far as practical on a regional basis. Thus devices supplied within the EU are often supplied with power adapters to cover all member states and with instruction manuals written in the languages for all the 27 EU countries.
35. It would be extremely complicated to supply and manage a 'Wales only' inventory for handsets in the supply chain. Were it required by law, the most likely consequence is that only a limited range of devices would be available in the Welsh market and they could be more expensive. Such an outcome would work against the interests of consumers in Wales. A situation could even arise whereby customers in Wales have to go to England to buy the model of mobile phone they want.
36. Legislation would not only affect the mobile phone operators but also the independent dealers – the large chains and the small traders – through which mobile services are retailed to the public. It is highly likely that the compliance costs falling on the small retailers – in an already highly competitive situation – would force many to withdraw from the Welsh market.

International roaming

37. Mobile operators, through international roaming agreements, provide voice and data services to UK based customers travelling overseas. They also provide services to the customers of overseas networks who are visiting the UK.
38. The networks communicate with both sets of customers. For example, a text message containing pricing and other information is usually sent to a UK based customer when he or she switches on a phone in a foreign country and the phone 'registers' on the roaming partner's network.
39. The infrastructure that underpins the ability for UK based customers to roam (i.e. have access to a local mobile network when abroad) in over 160 countries and for overseas customers to have access to local networks when in the UK is extremely complex.
40. The LCO does not go into the level of detail to describe whether it is the intention that anyone using a network in Wales, whether visiting or resident is serviced bi-lingually or whether any customer based in Wales can be serviced bi-lingually, wherever he is in the world. There may be technical constraints over what can be done with SMS (Texting), which can only accommodate 160 characters.

41. In any event, the MBG feels strongly that the additional complexity of delivering the international roaming service bi-lingually would be totally disproportionate to any potential benefits.

Customer services

42. In addition to retail stores, the mobile operators each support their customer base through a network of telephone held desks spread throughout the nations and regions of the UK and even overseas and through web sites.
43. The web site of each operator is extremely comprehensive and content changes on a daily basis. There would be a very high cost involved in maintaining a Welsh language version of the web-site, including the ability to transact business and view bills on-line.
44. The range of issues dealt with over the phone is also enormous – lost phones, damaged phones, billing inquiries, phone settings, phone upgrades, premium rate services, child protection to name but a few and of course a huge amount of technical support for the myriad of devices that can now be connected to a mobile network.
45. The mobile operators invest very heavily and continuously in staff training so that customer service agents are kept abreast of developments in this extremely dynamic market.
46. In aggregate, the mobile operators receive hundreds of millions of calls each year. They use traffic load management systems to direct customers to specialist teams and the least busy call centres. Thus a caller in Swansea could be put through to a call centre in Glasgow and caller in Newcastle could be directed to a call centre in Cardiff.
47. As we mention above, it is our understanding that the percentage of Welsh speakers represents about 1% of the UK customer base. It is inconceivable that mobile operators could manage traffic as efficiently or maintain the levels of expertise to service a maximum of 1% of the customer base as they could for the other 99%. There would be many practical problems of ensuring that Welsh speakers were available in the right place at the right time with the right technical knowledge. There could even be legal equal opportunity barriers. It would not be right to give preference, when recruiting in Darlington, for example, to give preference to a candidate that speaks Welsh, when there are other candidates with experience more relevant to providing customer support for mobile telephony.
48. The MBG foresees that, because of these practical limitations, a Welsh language customer service line would not be preferred by the majority of Welsh speakers and that the enormous investment that would be required would largely be wasted.

Conclusion

49. The MBG has not compiled a detailed assessment of the potential cost impact entailed in the LCO. However, we trust that it is clear on the basis of this short paper that the visible costs, across the various areas of the business, would run into millions of pounds and that there would be an impact on all UK consumers, the UK Government and Ofcom.
50. Ofcom are responsible for setting the General Conditions under which we operate and this should remain their sole responsibility, including the determination of the circumstances under which services should be required by regulation to service customers in languages other than English.
51. The proposed LCO sets a very high bar for compliance, whereby it requires the *'treatment of the Welsh and English languages on the basis of equality'*. This is a much higher bar than, for example, the Disability Discrimination Act, which requires businesses to make 'reasonable adjustments' to accommodate the needs of disabled customers.
52. It would also be completely contrary to regulatory good practice to grant the LCO without carrying out an impact assessment
53. The mobile operators are totally committed to the Welsh market. The MBG believes, though, that there are many smaller telecommunications providers that would be deterred by such measures from offering services in Wales at all, to the detriment of Welsh consumers.
54. With respect to mobile services, we believe that several factors would work against the interests of Welsh consumers: the extra complexity in the network, including 999 services, the potential for the choice of devices to be more limited and the very considerable practical problems of maintaining customer services in the Welsh language to the same standard as English.
55. Because of all these factors and the very high costs that the LCO could entail (and that have not been considered by the Government because of the absence of an impact assessment), the MBG strongly suggests that 'telecommunication services' be deleted from the LCO.
56. Deletion from the LCO would also mean the valuable resources would not be diverted from activity, such as improving mobile broadband coverage, that we perceive customers in Wales consider vitally important to their future economic and cultural wellbeing.