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Dear Frank

Persistent misuse of an electronic communications network or service

We welcome the opportunity to provide comments on the consultation on the above subject. SSE maintains a large call centre operation to cater for the needs of its base of 6.5 million energy customers throughout Great Britain. We are therefore concerned about any regulatory requirements that increase the cost or adversely affect the efficiency of call centre operations.

We recognise the general customer concerns about “silent calls”, that has prompted Ofcom to review its statement of policy on the persistent misuse of an electronic communications network or electronic communications service. We also note that the information presented in Ofcom’s impact assessment suggests that the great majority of such calls (between 94% and 97%, derived from Ofcom’s figures as follows (5.7-0.33)/5.7 and (9.6-0.33)/9.6 respectively) are unlikely to be made by UK call centre operators. Ofcom’s conclusion is that off-shore call centre activity and number scanning are likely to make up the majority of these silent calls.

We therefore firmly believe that Ofcom’s actions in relation to this issue should be targeted at measures that would have an effect on the latter activities and that it would be a disproportionate regulatory response to mandate additional burdensome measures on UK call centres. We are also of the view that any regulatory measures aimed at the UK call centre market should have the status of general guidelines rather than prescriptive specific measures that would be expected in every case. We are very concerned that Ofcom’s prescriptive proposals will entail significant costs for the company for little benefit to customers.

Following on from this, we have two main sets of comments on the issues raised in this consultation: firstly, on the wording and status of the proposed measures to be implemented by UK call centres; and secondly, on the issue of number scanning. We

have also attached a specific response to the questions raised by Ofcom in the consultation document, as an appendix to this letter.

Proposed measures to be implemented by UK call centres

In essence, we agree with Ofcom that responsible call centre operators should be managing the contact that they make with their target base of call recipients. It is to some extent helpful for Ofcom to set out the sort of measures it would expect call centres to undertake so that there is a common understanding across the industry of what represents best practice in this area. However, we are very much against the proposed measures becoming an obligatory set of “tick-boxes”. Due regard must be taken of the purpose of the call.

In particular, we would urge Ofcom not to be too prescriptive in setting out measures that it would consider to be appropriate “mitigating factors” if there were to be any investigation of a particular UK call centre’s activities under the statutory provisions relating to persistent misuse. For example, a recorded information message which identifies “the intended purpose of the call” may not be appropriate in all circumstances. Where calls to customers are in relation to debt follow-up, leaving a specific message about the purpose of the call raises issues about the privacy of the individual and the Data Protection Act. It cannot be assumed that the intended recipient of the message will be the person who actually listens to that message. Similarly, in the circumstances of debt follow-up, it would not be appropriate, in our view, for the customer to be able to choose not to receive calls or not to be called again for a further specific period.

Our other specific comments in relation to the procedures that Ofcom proposes at paragraph 5.16 of the document are set out below.

- *The ‘abandoned call’ rate shall be no more than three per cent of ‘live calls’ on each individual campaign over any 24 hour period.*

Given the low level of contribution to the overall problem of silent calls from UK call centres, we do not believe that Ofcom has justified a tightening of existing industry standards on abandoned call rates. Furthermore, other proposed measures, in particular that brief recorded messages are left in the event of an abandoned call, are likely, in our view, to mitigate the annoyance and anxiety caused by silent calls, as the caller would be identified. SSE already operates to an “abandoned call rate” below the guidelines set by industry groups (4% and 5% by Market Research Society and Direct Marketing Association respectively) and noted in Ofcom’s document.

We therefore propose that Ofcom embodies the current industry “best practice” of 4% in its guidelines which would represent a tightening of general practice in this area without penalising companies who are already operating at the frontier of existing industry best practice. Any reduction in the acceptable percentage of abandoned calls would impact on call centre efficiency and therefore costs. In our view, greater attention would need to be paid to these costs in Ofcom’s impact analysis if any increase in these costs above the level represented by current best practice was to be required.

- *In the event of an ‘abandoned call’, a very brief recorded information message is played within one second of the call being answered ...*

The recorded information message proposed is too prescriptive, particularly as discussed above in relation to calls in connection with debt collection. Whilst we understand the rationale for requiring a brief message to be left in the event of an abandoned call, we are strongly of the view that the message should only be required to identify the company on whose behalf the call was made and a low-rate or free call number for the person to return the call if they wish. It should not be a requirement to identify the intended purpose of the call. Any other information provided should be appropriate to the type of call, at the discretion of the call centre operators. Furthermore, Ofcom has not provided any evidence that customers want such recorded information.

- *When an ‘abandoned call’ is made to a particular number, that number is not called again in the following 72 hours, unless a dedicated operator is available;*

As it stands, this proposed measure is too prescriptive and does not take into account the purpose of the call. In the case of normal interaction with existing customers, for example the debt follow-up calls discussed above, it is inappropriate for a call centre operator to wait three days to contact a customer if the first call has had to be abandoned. Another example of a call to a customer where time is of the essence is when the customer has recently become a customer through switching supplier and an outbound call is made to ensure that the customer’s experience of the transfer process is positive and that no problems have occurred. It would, in our view, be an artificial degradation in customer service, if these customers could not be contacted in the event (which call centres will strive to avoid) that the initial call to the customer has had to be abandoned. Again, no evidence has been presented that customers want this sort of time delay before they are re-contacted.

We therefore propose that this requirement within the proposed measures is removed, or made more general. For example, the requirement could be made more flexible by wording it as follows: “*when an ‘abandoned call’ is made to a particular number, that number is not called again for a reasonable period, depending on the nature of the call, unless a dedicated operator is available*”.

- *Either a recorded message or a live operator is available at the CLI number presented to inform called persons of the identity of the organisation that called them, ...*

To some extent, this requirement duplicates that relating to leaving a recorded message, and the same comments are applicable.

- *Any call made by the called person to the contact number provided shall not be used as an opportunity to market to that person*

We object to this proposed requirement. A customer whose sales-related call has been abandoned may have been interested in hearing about new products or additional services if that call had got through. If the customer then phones to find out what the call was about, we consider that it would be an artificial regulatory

barrier to the development of competition if we could not discuss the original purpose of the call with the customer. In our view, the customer is in no worse a position if he receives marketing information as a result of calling the contact number than if the original “abandoned” call succeeded. In some ways, he would actually have shown himself to be interested in following up a call from the particular organisation concerned by calling the contact number, when he was at liberty to ignore it. We note that in the impact assessment, a reduction in the number of customers being able to benefit from tele-marketing is seen as a negative effect.

Number Scanning

Our second main comment on this consultation paper relates to the practice of number scanning. Ofcom explains in the consultation that number scanning is where calls are made to establish the status of telephone numbers i.e. “in service” or not. This practice is carried out in order to establish a list of active telephone numbers and Ofcom suggests that number-scanning might make up a significant proportion of silent calls. It appears to us that number scanning would not be needed if there was a centrally held database of valid telephone numbers or a “national directory”. We therefore urge Ofcom to look at ways in which the organising of numbering and directories could be centralised – perhaps by Ofcom – so that this source of “silent calls” would become redundant.

I hope these comments are helpful and that Ofcom is able to reconsider some aspects of the proposed measures to be applied by UK call centres, along the lines and for the reasons discussed above.

Yours sincerely

Rob McDonald
Director of Regulation

APPENDIX

Response to Consultation Questions

Q1 Do you agree that consumers are concerned by silent calls and that Ofcom is right to take enforcement action against the companies that make them?

We agree that there is some concern amongst consumers about silent calls and that Ofcom is right to seek to address the problem. However, it would appear more proportionate to take regulatory steps against the sources of the majority of these calls. From the information in the consultation paper, these appear to be offshore call-centres and number-scanning operators. In our covering letter, we have suggested what might be done to make number-scanning redundant.

In relation to UK-based call centre operators, we agree that there is some merit in Ofcom setting out general guidelines on what measures it would expect operators to take to reduce any anxiety or annoyance caused by silent calls. However, as discussed in our covering letter, we do not agree that these should be expected to apply in a prescriptive, blanket approach.

Q2 Do you agree with Ofcom's proposed approach to taking enforcement action, guided by a sense of administrative priority?

We agree with Ofcom's overall approach to allow the industry to self-regulate against a background of guidelines on acceptable measures for call centre operators to undertake. We support Ofcom's stance that a small threshold of abandoned calls by any call centre operator is acceptable.

Q3 Do you agree that the range of procedures proposed in the statement will be effective in reducing the degree of anxiety, annoyance and inconvenience caused by silent calls?

We have made some specific comments in our covering letter about the range of procedures proposed in the statement. Our overall concern is that these procedures should not be as prescriptive as they are currently drafted and that they should have the status of guidelines. In our view, operators should be able to demonstrate, if required, to Ofcom that they are actively managing the outbound calling activity such that any anxiety, annoyance or inconvenience caused by silent calls is minimised. They should not be required to adhere to a rigid "tick-list" of procedures that may not be appropriate in all cases, as discussed in our covering letter.

In particular, we do not believe that a robust case has been made to reduce the abandoned call rate below the current level of industry best practice, which is 4%. In our view, Ofcom should allow the other measures proposed to settle in to determine whether there is still consumer concern in this area attributable to the activities of the UK-based call centres, before there is any required reduction in this fundamental measure of call centre activity.

Q4 Are there any additional procedures which call centres could adopt to reduce the degree of anxiety, annoyance and inconvenience caused by silent calls?

We do not believe any additional measures are necessary.