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## **Confirmation Decision under section 96C of the Communications Act 2003**

Confirmation Decision served on Met Technologies Limited by the Office of Communications (Ofcom) for contravention of General Conditions C7.3(a), C7.7, and C7.14(a)

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ISSUE DATE: 12 November 2021

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# 1. Overview

Ofcom regulations include conditions intended to protect domestic and small business customers when switching their communications provider.

On 19 November 2019, Ofcom opened an investigation into Guaranteed Telecom Limited (Guaranteed Telecom) and Met Technologies Limited (Met Technologies) (the 'Parties') following an increase in consumer complaints to Ofcom's Consumer Contact Team (CCT).

This document sets out Ofcom's findings that the Parties contravened their regulatory obligations under General Conditions (GCs) C7.3(a), C7.7 and C7.14(a) relating to switching. It also sets out why we consider this to be a serious breach of the regulations and why we have imposed a penalty of £10,000 on Guaranteed Telecom and £25,000 on Met Technologies.

## What we have found – in brief

**The Parties contravened switching regulations over at least a 12-month period, between 1 January 2019 and 31 December 2019.** Based on information received as part of our investigation, and having considered the representations made by the Parties in response to Ofcom’s provisional notification, we have found that each of Guaranteed Telecom and Met Technologies contravened:

- GC C7.3(a) by slamming at least 110 Customers (43 and 67 respectively) (i.e. transferring their service without their permission), and in most cases, did so more than once;
- GC C7.7 by failing to create and keep at least 346 records of those Customers consenting to switch their services to them (107 and 239 respectively); and
- GC C7.14(a) by using Cancel Other (a mechanism that losing providers can use in specific situations - as set out in the conditions - to cancel a request to transfer a customer) in a way that is not consistent with the accompanying Annex 1 to GC C7, to prevent at least 52 customers (27 and 25 respectively), that they had slammed, from switching to another provider.

Whilst these GCs are all individually vital in protecting consumers, we note that they also work together as a multi-layered protection arrangement to protect consumers.

**We are satisfied that this was a serious breach of our rules to protect customers.**

- Slamming is one of the most serious breaches of the GCs that can occur - consumers have a fundamental right to choose their communications provider and should not have their services transferred without their knowledge or express consent.
- The requirement to create and keep records of the consumers consent (for example, call recordings of the consumer consenting to switch provider) is specifically intended to deter providers from slamming consumers, and to help Ofcom in our investigations into alleged slamming.
- The Cancel Other mechanism should only be used in very limited circumstances, such as if the customer is being slammed (by another provider). Losing providers must take all reasonable steps to establish that these circumstances are met before using Cancel Other (e.g. that slamming has actually taken place). Using Cancel Other as a means to prevent consumers from legitimately transferring to another provider limits the choice of those consumers. This is particularly serious where they are prevented from transferring away from a provider that slammed them.

**Significant harm was caused by the contraventions.** Slamming can cause significant harm to affected consumers, including distress, anxiety, financial harm, as well as spending time trying to resolve the issue. This harm is likely to be intensified where a provider repeatedly attempts to take over a consumer’s communications services without their consent. The harm is compounded where the slam is successful. Further, Ofcom considers that the degree of harm is significantly increased where consumers are not only slammed but are then also prevented from switching away from the provider that slammed their services. This is likely to cause considerable distress and anxiety, as well as being time consuming.

**We have imposed two penalties totalling £35,000 on the Parties.** Our view is that the penalties of £10,000 for Guaranteed Telecom and £25,000 for Met Technologies are appropriate and proportionate in respect of the contraventions in which they are imposed. In reaching our decision we have taken account of all the evidence referred to in this document, as well as our published Penalty Guidelines. We also consider it appropriate that, to the extent they have not already done so, the Parties should take steps to remedy their actions and ensure future compliance of the GCs. These are set out in full in the Confirmation Decision.

**This overview is a simplified high-level summary only. Our findings and our reasoning are set out in the full document.**

## 2. Introduction

### The Parties

- 2.1 Guaranteed Telecom also trades as Zoom Telecom. Our understanding is that both provide landline and/or broadband services to businesses and domestic customers within the UK.
- 2.2 Met Technologies trades under Millenium Talk and Met-Plus Telecom, both of which offer landline and/or broadband services to domestic customers and businesses within the UK.
- 2.3 Whilst Guaranteed Telecom and Met Technologies are separate legal entities, both companies are under common management.<sup>1</sup> In addition, the practices that form part of this investigation often appear to have been carried out by both Parties interchangeably, or in combination. For example, Ofcom noted several occasions where we were provided with a call recording, where the agent told the Customer that they would be transferring to Zoom Telecom, but the Transfer Order<sup>2</sup> was placed on the Openreach platform using a Reseller Identification Code (RID)<sup>3</sup> which was allocated to one of the trading names of Met Technologies. See paragraphs 3.46 to 3.48 below.

### The consumer protection framework for switching

- 2.4 Ofcom has set a number of General Conditions (“GCs”)<sup>4</sup> to protect consumers, which Communications Providers (“CPs”)<sup>5</sup> must comply with in order to further consumers’ interests and protect them from poor practices.
- 2.5 GC C7 is an important consumer protection provision, which sets out the general conditions which relate to switching. The aim of the condition is to protect domestic and small business customers during the process of switching their landline and/or broadband services.
- 2.6 GC C7.3(a) provides that when selling or marketing certain services, the Gaining Provider<sup>6</sup> must not engage in Slamming. Slamming is where a CP places a Transfer Order to switch a consumer’s communications services, without the customer’s express knowledge and/or consent. Slamming is one of the most serious contraventions of the GCs that can occur. This provision embodies a fundamental consumer right that customers are not transferred to a different CP without their express consent. Further, the requirement set out in GC

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<sup>1</sup> The information at Companies House records that the active registered Director for both Parties is named as [Director]. [Director] was appointed as Director of Guaranteed Telecom on 15 April 2016 and Met Technologies on 9 July 2012. [§<]. See Annex 2.

<sup>2</sup> ‘Transfer Order’ means an order submitted by, or on behalf of, a Gaining Provider to Openreach, requesting for the Target Line to be transferred from the Losing Provider to the Gaining Provider.

<sup>3</sup> RIDs are a type of code that Ofcom allocates to communications providers for administrative purposes. They are three-character alphabetic codes which are used in the switching process to identify a provider. The allocation of RID Codes is publicly available.

<sup>4</sup> An unofficial consolidated version of the GCs is available on Ofcom’s website:

<http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/>

<sup>5</sup> ‘Communications Provider’ means a person who provides an Electronic Communications Network or an Electronic Communications Service (within the meaning of section 32 of the Communications Act 2003).

<sup>6</sup> ‘Gaining Provider’ means the CP to whom a Switching Customer is transferring.

C7.7, that Gaining Providers must create and keep individually retrievable records, including a direct Record of Consent, is an important component in deterring Slamming and enhancing Ofcom's ability to investigate cases where Slamming might have occurred.

- 2.7 It is vital that consumers feel able and confident to engage in the switching process and freely choose their suppliers. Cancel Other may be used by a Losing Provider<sup>7</sup> to prevent a customer from being Slammed. The requirements set out in Annex 1 to GC C7 aim to ensure that Cancel Other is not misused as a means to prevent a customer from switching their CP, and GC C7.14(a) requires CPs to comply with the provisions of Annex 1 to GC C7, where a customer's services is switched to another CP and this does not involve a change of location.
- 2.8 Any contravention of these provisions is potentially serious, particularly where the contravention is repeated and/or a significant number of consumers are affected.

## Our findings

- 2.9 We have investigated the Parties compliance with GC C7.3(a), GC C7.7 and GC C7.14(a).
- 2.10 Based on the information and evidence we have gathered, Ofcom has determined that the Parties contravened GC C7.3(a), GC C7.7 and GC C7.14(a) between 1 January 2019 and 31 December 2019 (the "Relevant Period").<sup>8</sup> Specifically:
- a) The Parties contravened GC C7.3(a) by placing Transfer Orders<sup>9</sup> on 110 Customers' Communications Services as between them, in each case without the Customer's<sup>10</sup> express knowledge and/or consent. And in respect of 90 of those Customers, the Parties placed, as between them, 237 repeat Transfer Orders following the cancellation of the initial Transfer Order by the Losing Provider without contacting the Customer to obtain their consent to do so.
  - b) The Parties contravened GC C7.7 by failing to create and maintain, as between them, at least 346 individually retrievable direct Records of Consent for the required minimum period of not less than 12 months, as set out in GC C7.7; and
  - c) The Parties contravened GC C7.14(a) on at least 112 occasions, as between them, in respect of at least 52 Customers, by using Cancel Other without taking reasonable steps to establish that Slamming had taken place, as required by paragraph 2 of Annex 1 to Condition GC C7.
- 2.11 Annex 3 sets out the individual contraventions we have found in respect of each Party.
- 2.12 In all the circumstances, we have found that these contraventions were serious and that there is a need to impose a penalty on each of the Parties that has a strong deterrent

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<sup>7</sup> 'Losing Provider' means the CP from whom a Switching Customer is transferring.

<sup>8</sup> We note that we have not made any findings in relation to practices that are not covered by this Notification.

<sup>9</sup> 'Transfer Order' means an order submitted by, or on behalf of, a Gaining Provider to Openreach, or KCOM, or other applicable wholesaler, requesting for the Target Line to be transferred from the Losing Provider to the Gaining Provider.

<sup>10</sup> 'Customers' refers to 110 consumers who had made a complaint to Ofcom's CCT between 1 January and 31 December 2019. These 110 Customers formed the basis of the Investigation and the conclusions set out in this Confirmation Decision are based on the assessment of those 110 Customers.

effect on them and industry more widely. We have therefore imposed a penalty of £10,000 on Guaranteed Telecom Limited and a penalty of £25,000 on Met Technologies Limited. Our regulatory judgment is that these penalties are appropriate and proportionate to the contraventions in respect of which they would be imposed. In taking that view, we have had regard to all the evidence referred to in Section 3 of this document, together with our published Penalty Guidelines. The basis for our decision as to the amount of the penalties is explained further in Section 4 below.

- 2.13 In light of all these matters, and on the basis of the evidence and reasoning contained in this document, we have issued this Confirmation Decision. It sets out the penalty we are imposing on the Parties as well as the steps Ofcom considers that the Parties should take to ensure compliance with the relevant provisions of GC C7 and to remedy the consequences of the contravention.



## 3. Ofcom's Findings

### The Regulatory Framework

- 3.1 Being providers of Electronic Communications Services<sup>11</sup>, Guaranteed Telecom and Met Technologies are subject to a number of GCs which have been imposed by Ofcom under sections 45 to 55 of the Act.

#### General Condition C7

- 3.2 GC C7 sets out the GCs relating to switching, and includes rules which have been designed to protect consumers during the process of switching services, either when moving from one CP to another, or staying with the same CP when moving location or changing services with the same CP. In particular, these conditions are designed to protect customers from suffering harm and distress caused as a result of having their services switched without their express knowledge and/or consent.
- 3.3 GC C7.1(a) provides that GCs C7.3 – C.7.15 apply to any CP which provides Fixed-Line Telecommunications Services and/DSL Broadband Services (“Communications Services”) when a customer is switching providers operating within Openreach’s or KCOM’s Access Network.

#### General Condition C7.3(a)

- 3.4 GC C7.3(a) prohibits CPs from engaging in Slamming. As stated above, it is an important consumer protection provision, which aims to ensure that customers are not transferred to a different CP without their express knowledge and/or consent.
- 3.5 Specifically, GC C7.3(a) states:
- “When selling or marketing Relevant Communications Services, the Regulated Provider that is the Gaining Provider must ensure that:*
- (a) it does not engage in Slamming;*
- (b) [...]*
- (c) [...]”*
- 3.6 Slamming is defined in the GCs, and the relevant parts of the definition are as follows:
- “‘Slamming’ means where:*

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<sup>11</sup> These are defined in the GCs as “a service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of signals, except in so far as it is a content service.”

- (a) A request for a CPS<sup>12</sup>, WLR<sup>13</sup>, SMPF<sup>14</sup> and/or MPF<sup>15</sup> has been made;
- (b) [...]
- (c) a Transfer Order or a Working Line Takeover order has been placed on Openreach [...], without the Switching Customer's express knowledge and/or consent, that is in the following circumstances:
- (i) where the Switching Customer<sup>16</sup> has never contacted, or has never been contacted by, the Gaining Provider;
- (ii) where the Switching Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Fixed-line Telecommunications Services and/or DSL Broadband Services;
- [...]

3.7 As follows from these provisions, a CP can be regarded to have engaged in Slamming when they submit a Transfer Order on the Openreach network, without the customer's consent, irrespective of whether or not the transfer is actually successful (i.e. whether or not the customer's Communications Services are transferred to that CP).

### **General Condition C7.7**

3.8 GC C7.7 requires CPs to create and keep individually retrievable records that include, amongst other things, direct records of consent ("Records of Consent") of the customer agreeing to switch their Communications Services to the Gaining Provider. The CP is required to hold each Record of Consent for a period of not less than twelve months.

3.9 Specifically, GC C7.7 states:

*"For each contract entered into with a Switching Customer for the provision of Relevant Communications Services, the Regulated Provider that is the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:*

- (a) a direct record of consent, as provided by the Switching Customer, to:

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<sup>12</sup> 'CPS' or 'Carrier Pre-Selection' means a facility which allows a Customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a Telephone Number.

<sup>13</sup> 'WLR' or 'Wholesale Line Rental' means a regulated wholesale service sold by a CP, which is used by the CP to provide retail Customers with exchange lines and, in turn, access to other narrowband telephony services (for example, telephone calls, facsimile and dial-up internet access).

<sup>14</sup> 'SMPF' or 'Shared Metallic Path Facility' means access to the non-voiceband frequencies of the MPF.

<sup>15</sup> 'MPF' or 'Metallic Path Facility' means a circuit comprising a pair of twisted metal wires between a Customer's premises and a main distribution frame in a local access node that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey Signals when connected to an Electronic Communications Network.

<sup>16</sup> 'Switching Customer' means a Customer that is a Domestic or Small Business Customer in relation to a Communications Provider which provides Fixed-Line Telecommunications Services and/or DSL Broadband Services using Openreach's or KCOM's Access Network.

- (i) *migrate from the Relevant Communications Services supplied by the Regulated Provider that is the Losing Provider to the Relevant Communications Services supplied by the Gaining Provider; or, as relevant,*
- (ii) *begin acquiring Relevant Communications Services over the Target Line;*
- (b) *a record a record of the explanation from the Regulated Provider that they are required to create a record of the Switching Customer’s consent;*
- (c) *the name and address of the Switching Customer;*
- (d) *the time, date and means by which the consent in sub-section (a) above was given;*
- (e) *where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;*
- (f) *the Target Address; and (g) where appropriate, the Calling Line Identification of the Target Line.”*

3.10 Additionally, GC C7.8 requires that a Gaining Provider must keep all Records of Consent, including where the contract was cancelled or terminated:

*“The Regulated Provider that is the Gaining Provider shall keep the records in accordance with Condition C7.7 irrespective of whether the contract for the provision of the Relevant Communications Services is cancelled or terminated within the minimum twelve-month period specified in Condition C7.7.”*

3.11 The requirement to keep a direct Record of Consent was introduced following Ofcom’s August 2013 Consumer Switching Statement (the “August Statement”).<sup>17</sup>

3.12 At paragraph 9.23 of the August statement, Ofcom set out its position in relation to the requirement, specifically, what would constitute a Record of Consent:

*“To ensure this obligation is met, CPs will have to amend their processes to ensure a direct record of the consumer’s consent, as given by the consumer, is kept for each of their sales channels. Each of the following could constitute a record of consent:*

- *call recordings for all successful telesales of the customers’ consent to the transfer. This consent could either be recorded as an individual element of the telesales process i.e. a verification stage, or the consumer could be put through to a separate person (e.g. internal verifier) who records the record of consent;*
- *[...]*
- *[...]”*

3.13 We note that the August Statement makes it clear that simply keeping the sales call would not be sufficient and that the Record of Consent needs to be a distinct part of the call, either at verification stage or the customer is put through to a separate person.

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<sup>17</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/76569/consumer\\_switching.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/76569/consumer_switching.pdf)

3.14 At paragraph 9.27 of the August Statement, Ofcom also set out the intention of the Record of Consent requirement, specifically stating that:

*“The recording of consent from a consumer to switch their services is intended to deter, and enhance our ability to investigate, slamming. There is also the potential for consumers to be misled during the initial sales calls. In order to continue to enforce against mis-selling more generally, we will retain the requirement (currently in GC 24.11) to use reasonable endeavours to create and keep all records regarding the sale of its communications services.”*

3.15 As follows from these provisions, a CP can be regarded to have contravened GC C7.7 by failing to create and keep individually retrievable records, which include Records of Consent, of customers agreeing to switch their Communications Services to the Gaining Provider for a period of not less than twelve months.

### **General Condition GC C7.14(a)**

3.16 GC C7.14(a) requires that, where a customer transfers their Communications Services to another CP, and this does not involve a change of location, both the Gaining Provider and the Losing Provider must comply with the provisions of Annex 1 to GC C7.

3.17 Annex 1 to GC C7, sets out the circumstances in which a Losing Provider is permitted to use Cancel Other, including where Slamming has occurred, and sets out what steps a Gaining provider must undertake before and after using the functionality.

3.18 GC C7.14 states:

*“Where the Regulated Provider is a Gaining Provider which elects to co-ordinate a Communications Provider Migration<sup>18</sup>, on behalf of a Switching Customer, and which does not involve a change of the location where the Relevant Communications Services are supplied:*

*(a) both the Gaining Provider and the Regulated Provider that is the Losing Provider shall comply with the provisions of Annex 1 to this Condition;*

*[...]*

*[...]”*

3.19 The relevant paragraphs of Annex 1 to GC C7 state:

*“1 The Losing Provider shall only be permitted to use Cancel Other in the following circumstances:*

*(a) where Slamming has occurred;*

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<sup>18</sup> ‘Communications Migration Provider’ is defined in the GCs as *“a process by which a Switching Customer transfers from a Fixed-line Telecommunications Service and/or a DSL Broadband Service supplied by one Communications Provider operating on Openreach’s or KCOM’s Access Network to a Fixed-line Telecommunications Service and/or a DSL Broadband Service provided by another Communications Provider operating on Openreach’s or KCOM’s Access Network;”*.

- (b) *at the Switching Customer's request, where the Gaining Provider has failed to cancel the Transfer Order after being directed by the Customer to do so ('Failure to Cancel');*
  - (c) *where the telephone line is or will be, ceased during the transfer Period ('Line Cease');*
  - (d) *for other specified reasons not related to a Switching Customer's request to cancel a transfer, as agreed by the relevant industry forum and approved by Ofcom; and*
  - (e) *in such other circumstances as directed by Ofcom.*
- 2 *Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.*
- 4 *After using Cancel Other, the Losing Provider shall confirm the cancellation of the order by Durable Medium to the Switching Customer, unless this is not possible or appropriate, including where the Switching Customer is deceased.*
- [...]"*

3.20 As follows from these provisions, a CP can be regarded to have contravened GC C7.14(a) by not complying with the provisions of Annex 1 to GC C7, which, sets out the circumstances in which Losing Providers are permitted to use Cancel Other.

## **Ofcom's investigation and enforcement powers**

- 3.21 Sections 96A to 96C of the Act set out Ofcom's enforcement powers in cases where Ofcom determines there are reasonable grounds for believing that a person is contravening or has contravened a GC.
- 3.22 Section 96A of the Act provides for Ofcom to issue a notification (a "section 96A Notification") setting out Ofcom's provisional view of the alleged contravention. The section 96A Notification will include, amongst other things:
- the steps which Ofcom considers should be taken to comply with the relevant requirement and to remedy the consequences of the contravention;
  - the period within which the subject of the investigation may make representations in response to Ofcom's preliminary views; and
  - details of any penalty that Ofcom is minded to impose for the alleged contravention in accordance with section 96B of the Act.
- 3.23 Section 96C of the Act provides that, on expiry of the period allowed for representations, Ofcom may either:
- issue a confirmation decision, confirming the imposition of requirements on the subject of the investigation and the imposition of the penalty specified in the section 96A Notification or a lesser penalty; or

- inform the person we are satisfied with their representations and that no further action will be taken.

## Our investigation

- 3.24 On 20 November 2019, Ofcom opened an investigation<sup>19</sup>, in accordance with our published Enforcement Guidelines (the “Investigation”) into the Parties’ compliance with their obligations under GC C7.<sup>20</sup> This followed a notable increase in consumer complaints to Ofcom’s Consumer Contact Team (CCT), mostly concerning possible Slamming practices by the Parties.
- 3.25 On 9 December 2019, the Parties’ legal representative wrote to Ofcom in response to the opening of the Investigation (the “9 December Letter”). [REDACTED].
- 3.26 [REDACTED].
- 3.27 [REDACTED].
- 3.28 During the investigation, Ofcom issued the Parties with four requests for information under s135 of the Act (see paragraphs 3.36 – 3.40 below and Annex 2).
- 3.29 Based on the evidence received during the investigation, Ofcom considered there were reasonable grounds for believing that the Parties contravened GC C7.3(a), GC C7.7 and GC C7.14(a) during the Relevant Period. Accordingly, on 4 June 2021, Ofcom issued the Parties with a Notification under section 96A of the Act (the “Section 96A Notification”).
- 3.30 The Section 96A Notification set out Ofcom’s provisional findings that during the Relevant Period, the Parties contravened:
- GC C7.3(a) by placing Transfer Orders on 110 Customers’ Communications Services in each case without the Customer’s express knowledge and/or consent. And in respect of 90 Customers, the Parties placed 237 repeat Transfer Orders following the cancellation of the initial Transfer Order by the Losing Provider without contacting the Customer to obtain their consent to do so;
  - GC C7.7 by failing to create and maintain at least 346 individually retrievable direct Records of Consent for the required minimum period of not less than 12 months, as set out in GC C7.7; and
  - GC C7.14(a) on at least 112 occasions, in respect of at least 52 Customers, by using Cancel Other without taking reasonable steps to establish that Slamming had taken place, as required by paragraph 2 of Annex 1 to Condition GC C7.
- 3.31 The Section 96A Notification set out Ofcom’s provisional view that it was minded to impose a penalty for the contraventions and the amount of the penalty that Ofcom provisionally considered would be appropriate and proportionate. It also set out the steps that Ofcom provisionally concluded that the Parties should take to comply with the

<sup>19</sup> The Investigation is described in more detail in Annex 2.

<sup>20</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01250](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01250)

requirements of GC C7.3(a), GC C7.7 and GC C7.14(a) and remedy the consequences of the contraventions. The Parties were given the opportunity to make written and/or oral representations on the notified matters.

- 3.32 The Parties provided joint written representations on 2 July 2021 (referred to as the “Representations”).
- 3.33 Following the submission of the Representations Ofcom sent a third Notice under s135 of the Act (the “Third Notice”) to the Parties on 2 August 2021. The purpose of which was to clarify the information provided by the Parties in their Representations. The Parties responded to the Third Notice on 23 August 2021 (the “Third Response”).
- 3.34 Ofcom carefully considered the Representations and the information provided in the Third Response and, having done so, is satisfied that, during the Relevant Period, the Parties contravened GC C7.3(a), GC C7.7 and GC C7.14(a) as set out in paragraph 3.30 above.
- 3.35 The Parties Representations and Ofcom’s considerations and final decision are provided in more detail below.

## Information gathering

### Requests for information from the Parties

- 3.36 As part of the investigation, Ofcom used its powers under section 135 of the Act to obtain information and evidence from the Parties.<sup>21</sup>
- 3.37 In its first request (the “First Notice”), Ofcom required the Parties to provide relevant information relating to Transfer Orders placed by the Parties during the Relevant Period, this included all direct Records of Consent.
- 3.38 In response (the “First Response”) the Parties provided a total of 1092 call recordings, all of which consisted of only Records of Consent,<sup>22</sup> as the Parties stated that they [X]. They also provided relevant account information<sup>23</sup> for each of the Customers to which the call recordings related.
- 3.39 The purpose of Ofcom’s second and fourth notices to the Parties, was to request relevant information relating to the Turnover of the Parties.
- 3.40 As stated above, the purpose of Ofcom’s Third Notice was to further understand the Parties Representations to the s96A Notification.

### Request for information from Openreach

- 3.41 Ofcom also used its information gathering powers to obtain information from Openreach (the “Openreach Notice”).<sup>24</sup> This required the provision of Transfer Order data for all

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<sup>21</sup> See Annex 2.

<sup>22</sup> Of the 1092 call recordings provided to Ofcom by the Parties, Ofcom was able to match 28 with the selection of CCT Complaints it assessed, and the Openreach Transfer Data.

<sup>23</sup> Including account information such as Customer name, account number, address, and telephone number.

<sup>24</sup> See Annex 2.

Transfer Orders placed using the Parties' allocated RID Codes on the Openreach network during the Relevant Period.

- 3.42 As part of its response (the "Openreach Response"), Openreach provided a spreadsheet with Transfer Order records for all Transfer Orders placed during the Relevant Period (the 'Openreach Transfer Data').<sup>25</sup>
- 3.43 The Openreach Transfer Data included Customers Calling Line Identification ('CLI')<sup>26</sup>, which Ofcom used to match Customer complaints made to the CCT, and information and evidence supplied by the Parties in response to the First Notice (where it was possible to do so).
- 3.44 A copy of the Openreach Transfer Data can be found at Annex 4.

### **Ofcom's assessment of the contraventions**

- 3.45 The following paragraphs of this Confirmation Decision rely on the following information and evidence (where that evidence and information was available to the case team):<sup>27</sup>
- i) the Customer complaints made to Ofcom's CCT during the Relevant Period;
  - ii) the information and evidence supplied by the Parties in their First Response; and
  - iii) the Openreach Transfer Data.<sup>28</sup>

#### Contraventions in respect of each Party

- 3.46 For the reasons set out in this section, we have found that the Parties have contravened GC C7.3(a), GC C7.7 and GC C7.14(a). As stated above,<sup>29</sup> although the Parties are separate legal entities, they are under common management. Furthermore, the practices that form part of this investigation appear to have been carried out by both Parties interchangeably, or in combination such that the Parties appeared to be operating in practice as one single entity. Consequently, we have adopted the following approach to the contraventions that we have found in this section:
- a) In cases where either of the Parties or their trading names, appear either in the Record of Consent call recording or account information (where these were provided to Ofcom by the Parties in their First Response, and we were able to match them to the relevant CCT complaints), or in the relevant CCT complaint (i.e. the Customer mentioned the Parties or their trading names) as the relevant CP, the relevant contravention has been found in respect of that Party;

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<sup>25</sup> This includes details such as the dates Transfer Orders were placed, cancelled and/or completed, as well as the dates on which the Parties used Cancel Other to cancel a Transfer Order placed by another CP.

<sup>26</sup> CLI data consists of a number that enables identification of the telephone number from which a call could be made or to which a call could be made.

<sup>27</sup> The evidence relied upon is taken primarily from the Openreach Transfer Data, as well as the Customer complaints made to the CCT, and where possible the Records of Consent call recordings provided by the Parties.

<sup>28</sup> The case team used the Customer information provided by the Parties to match any Customer complaints made to Ofcom's CCT with the call recordings as well as with any corresponding information provided by Openreach.

<sup>29</sup> See paragraph 2.3.



- b) In cases where we were not provided with a call recording or account information, or none of the Parties is mentioned in the relevant CCT complaint, call recording or account information, the relevant contravention has been found in respect of the Party whose RID was used to place the relevant Transfer Order on the Openreach Network.
- 3.47 Throughout this Confirmation Decision, we refer to the number of contraventions by the Parties as a total combined number unless otherwise stated. Annex 3 sets out the contraventions we have found in respect of each Party.
- 3.48 While we draw on relevant examples to illustrate our findings in this section, a copy of the analysis and data used to reach our decision can be found at Annex 3.

## Our Findings

- 3.49 As set out above<sup>30</sup>, the Parties provide Communications Services, and are therefore subject to Conditions GC C7.3(a), 7.7 and 7.14(a) when customers are transferring between their services and the services of another provider within Openreach's network.

### Contravention of GC C7.3(a)

- 3.50 Ofcom has found that, during the Relevant Period, the Parties engaged in Slamming by:
- a) placing Transfer Orders on Customers' CLI's without the Customers express knowledge and/or consent, in circumstances where the Customer had not had contact with the Parties, and/or had not given their express consent to the Parties to transfer their Communications Services; and
  - b) by placing repeat Transfer Orders on CLI's, following the cancellation of the initial unauthorised Transfer Order by the Losing Provider, without first contacting the Customer to obtain their consent to place a new Transfer Order.

#### (a) **Placing Transfer Orders for Communications Services without the Customers express knowledge and/or consent**

- 3.51 Ofcom has determined that the Parties placed Transfer Orders for Communications Services without Customers' express knowledge and/or consent in respect of at least 110 Customers. Ofcom identified four scenarios in which the Parties did this.

##### No contact

- 3.52 40 Customers stated to Ofcom's CCT that they had not had any prior contact with any CP before becoming aware that their Communications Services were being transferred.
- 3.53 Analysis of the Openreach Transfer Data confirms that Transfer Orders were indeed placed on each of those 40 Customers' CLIs at least once during the Relevant Period.
- 3.54 Furthermore, the Parties did not provide Ofcom with evidence, for example corresponding Records of Consent, to demonstrate that those 40 Customers had consented to the

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<sup>30</sup> See paragraph 3.1.

Transfer Orders identified during the Relevant Period to have been placed on their CLI's as requested in Ofcom's First Notice. The failure to provide such evidence further corroborates the Customers claims that they had not had any prior contact with the Parties and that the Parties did not have consent from the Customers to place the Transfer Orders.

- 3.55 The evidence relating to each of these 40 Customers is set out in Annex 3. For illustration, we set out below the details of three of these cases:
- One Customer<sup>31</sup> stated to the CCT that they had not had any prior contact with the Parties before the Transfer Order was placed on their CLI. The Openreach Transfer Data confirmed that the Parties placed at least one Transfer Order on the Customers CLI, which resulted in a successful transfer. We were not provided with the corresponding Records of Consent by the Parties, which corroborated the Customers complaint to the CCT.
  - One Customer<sup>32</sup> stated to the CCT that she had only become aware of the transfer after receiving a "sorry to see you go" letter from BT, and that she had not had any recent contact with any other CP. The Openreach Transfer Data showed that at least one Transfer Order had been placed on the Customers CLI, which resulted in a successful transfer. We were not provided with the corresponding Records of Consent by the Parties, which corroborated the Customers complaint to the CCT.
  - Another Customer<sup>33</sup> told the CCT that they had not had any prior contact with the Parties before the Transfer Orders were placed on their CLI, and that they were only made aware of the transfer when they received contact from their existing CP. The Openreach Transfer Data showed that the Parties placed at least one Transfer Order on the Customers CLI, resulting in a successful transfer. We were not provided with the corresponding Records of Consent by the Parties, which corroborated the Customers complaint to the CCT.

3.56 Of those 40 Customers, 21 had their Communications Services successfully transferred to the Parties as a result of the Transfer Order placed by the Parties.

#### Potential contact, but no consent

- 3.57 24 Customers stated to the CCT that they had received a call from a CP but that they did not know the name of the CP that the agent was calling from (either because they forgot or the agent did not say), or, that the agent had purported to be calling from, or linked to, BT or Openreach. In each case, the Customers stated that they had not authorised the transfer of their Communications Services during the call.
- 3.58 Whilst the Openreach Transfer Data confirms that the Parties did indeed place Transfer Orders on all 24 Customers CLIs during the Relevant Period, the Parties did not provide Ofcom with evidence, for example corresponding Records of Consent, to demonstrate that the Customers authorised them to place the Transfer Orders. The failure to provide this

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<sup>31</sup> Ofcom Reference [redacted].

<sup>32</sup> Ofcom Reference [redacted].

<sup>33</sup> Ofcom Reference [redacted].

evidence corroborates the Customers claims that they had not authorised the transfer of their Communications Services. Had the Parties held such evidence they would have been required to disclose it to Ofcom in response to the First Notice.

3.59 The evidence relating to each of these 24 Customers is set out in Annex 3. For illustration, we set out below the details of two of these cases:

- One Customer<sup>34</sup> told the CCT that she had received a cold call from an agent, who did not identify which CP they were calling from, and that she did not agree to transfer her Communications Services during the call. The Openreach Transfer Data confirmed that the Parties placed at least one Transfer Order on the Customers CLI.<sup>35</sup> We were not provided with the corresponding Records of Consent by the Parties, which corroborated the Customers complaint to the CCT.
- Another Customer<sup>36</sup> stated that she had received a call from an agent who purported to be from BT. The Customer asked for more information to be sent by post and did not agree to transfer her services. The Customer was only notified of the transfer after receiving several 'sorry to see you go' letters from her existing CP. The Openreach Transfer Data confirmed that the Parties placed at least one Transfer Order on the Customers CLI.<sup>37</sup> We were not provided with the corresponding Records of Consent by the Parties, which corroborated the Customers complaint to the CCT.

3.60 Eight<sup>38</sup> of those 24 Customers had their Communications Services successfully transferred to the Parties as a result of the Transfer Order placed by the Parties.

#### Contact but no consent

3.61 A further 18 Customers told the CCT that they had had contact with one of the Parties before their Communications Services had been switched, but that they had not authorised the transfer during the call.

3.62 The Openreach Transfer Data showed that for each of those 18 Customers, Transfer Orders were placed at least once by the Parties during the Relevant Period. However, the Parties did not provide us with the corresponding Records of Consent to demonstrate that they had obtained consent from those Customers before placing the Transfer Orders on their CLI's. The failure to provide such evidence further corroborates the Customers' claims that they did not authorise the transfer of their Communications Services to either Party.

3.63 Of those 18 Customers, 10 had their Communications Services successfully transferred to the Parties as a result of the Transfer Order placed by the Parties.

#### Customer initially agreed to switch

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<sup>34</sup> Ofcom Reference [§<].

<sup>35</sup> The final Transfer Order was successfully cancelled by the Losing Provider.

<sup>36</sup> Ofcom Reference [§<].

<sup>37</sup> The final Transfer Order was successfully cancelled by the Losing Provider.

<sup>38</sup> In the Provisional Notification, Ofcom noted that 9 Customers' CLI's were successfully transferred to the Parties as a result of the Transfer Order placed by the Parties. Following a review, Ofcom noted that one Customer's CLI was not successfully transferred to the Parties and has therefore amended the number to 8 to reflect this. In Ofcom's view this does not materially impact on its findings.

- 3.64 An additional 28 Customers stated to the CCT that their Communications Services were transferred to another CP against their will.
- 3.65 The Openreach Transfer Data showed that for all those Customers, the Parties had placed Transfer Orders on the Customers' CLI's during the Relevant Period.
- 3.66 In respect of these 28 Customers, we were able to match the Records of Consent call recordings that the Parties had provided to Ofcom in their First Response. Following an assessment of those call recordings, Ofcom determined that the Customers had given their consent to the Transfer Order in those calls.
- 3.67 However, the Openreach Transfer Data also showed that for each of those Customers, the initial Transfer Order was cancelled by their existing CP, and that at least one further Transfer Order had been subsequently placed by the Parties on those CLIs.
- 3.68 Ofcom interprets GC C7.3(a) to cover, amongst others, the following scenario:
- where a customer initially authorises the Gaining Provider to submit a Transfer Order on their CLI, and subsequently the transfer is cancelled (whether by the Gaining or Losing Provider), the Gaining Provider no longer has the express consent to place a transfer on the customers services.
  - In this event, each subsequent Transfer Order would require consent from the customer, because each transfer must be treated as a new request. Therefore, if the Gaining Provider does not contact the customer again, the customer will be deemed to have never been contacted for the purposes of that particular order.<sup>39</sup> Ofcom would therefore expect a separate Record of Consent for every Transfer Order submitted by a CP, even where consent was given by the customer, for the initial Transfer Order.
- 3.69 Therefore, Ofcom considers that the second Transfer Order placed on the CLI of each of these 28 Customers constituted a new Transfer Order and therefore, the Parties should have sought consent from each Customer before placing the Transfer Order. The Parties did not provide us with the additional corresponding Records of Consent to demonstrate that they obtained further consent from those 28 Customers before placing the subsequent Transfer Orders on their Communications Services. These Slams are comparable with the no-contact Slams that are referred to in 3.52 to 3.56 above.
- 3.70 Of those 28 Customers, 27 had their Communications Services successfully transferred to the Parties despite the initial Transfer Order being cancelled by the Losing Provider.
- (b) Placing repeat Transfer Orders for Communications Services without the Customer's express knowledge and/or consent**
- 3.71 Ofcom has determined that the Parties contravened GC C7.3(a) by placing 237 repeat Transfer Orders on 90 Customers Communications Services.

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<sup>39</sup> See for example Ofcom's previous decision relating to True Telecom:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/108885/true-telecom-confirmation-decision.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/108885/true-telecom-confirmation-decision.pdf)

- 3.72 This section refers to instances involving the placing of repeat Transfer Orders, as separate from those covered in section (a) above. Specifically, section (a) refers to the first Transfer Order placed on the CLIs of 110 Customers, without their consent. This section covers subsequent Transfer Orders, referred to as repeat Transfer Orders, placed on the CLIs of 90 of those 110 Customers, after the first unauthorised Transfer Order had been cancelled.
- 3.73 As stated above<sup>40</sup>, Ofcom interprets GC C7.3(a) to mean that after a Transfer Order is cancelled, the Gaining Provider must establish consent before placing any subsequent Transfer Order, whether the Customer agreed to the initial Transfer Order or not. Any repeat Transfer Order placed without the Customer’s express knowledge and/or consent will be a separate incidence of Slamming and a breach of GC C7.3(a). Although these 90 Customers are included in the cohort of 110 Customers discussed above, we therefore find these instances of repeat Transfer Orders as separate contraventions.
- 3.74 Of those 90 Customers whose CLIs were subject to repeat Transfer Orders, 14 had initially authorised the Parties to submit a Transfer Order for their Communications Services which had been subsequently cancelled. The remaining 76 Customers had never given their consent to the Parties to submit any Transfer Order on their CLI during the Relevant Period.
- 3.75 In total, the Openreach Transfer Data shows that the Parties placed at least 341 Transfer Orders on those 90 Customers’ CLIs during the Relevant Period, of which 237 were repeat Transfer Orders<sup>41</sup>. All Customers complained to the CCT about their Communications Services being transferred to the Parties without their knowledge and/or consent.
- 3.76 Ofcom’s view is that the Parties persistently submitted Transfer Orders on some of these Customers’ CLI after the initial Transfer Order was cancelled. The Openreach Transfer Data shows that 68 Customers had two or more repeat Transfer Orders placed on their CLIs, with 26 of those being subjected to between four and six repeat Transfer Orders on their CLIs.

*Table 1: Number of repeat Transfer Orders placed by the Parties, per Customer<sup>42</sup>*

<b>Repeat Transfer Orders placed per customer</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>Total</b>
Customers affected	22	20	22	22	3	1	<b>90</b>

<sup>40</sup> See paragraph 3.68.

<sup>41</sup> As stated in paragraph 3.72, in calculating the amount of repeat Transfer Orders that were placed on the 90 Customers CLIs, we did not calculate the initial Transfer Order placed on 14 Customers’ CLIs as the initial Transfer Order had been consented to by the Customers. We also did not calculate the second Transfer Order placed on these 14 Customers’ CLIs that was placed after the initial agreed Transfer Order was cancelled, as this second Transfer Order was the first *unauthorised* Transfer Orders placed on these CLIs (accounted for in paragraphs 3.64 to 3.70 above). We also did not include the initial Transfer Order of the remaining 76 customers who had never given their consent to the Parties to submit any Transfer Order on their CLI as these have also been accounted for in paragraphs 3.52 to 3.63 above.

<sup>42</sup> This table shows how many times the Parties placed a repeat Transfer Order on a single CLI, for example, the Parties placed 2 repeat Transfer Orders on the CLIs of 20 separate Customers CLIs.

Total repeat Transfer Orders	22	40	66	88	15	6	<b>237</b>
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- 3.77 The Openreach Transfer Data also showed that the majority of Customers were subject to multiple repeat Transfer Order requests within a short space of time. This may have increased the likelihood that Customers, or their existing CP, were unable to prevent the Transfer Order.
- 3.78 We note that the Parties did not provide Ofcom with the Records of Consent for the 237 repeat Transfer Orders that they submitted during the Relevant Period on 90 Customers CLI's as requested by Ofcom's First Notice. Our view is that the Parties' failure to provide the Records of Consent corroborates the Openreach Transfer Data evidence that those 237 repeat Transfer Orders were placed on 90 Customers CLI's without their prior consent.
- 3.79 The evidence relating to each of these 90 Customers is set out in Annex 3. For illustration, we set out below the details of four of these cases:
- One Customer<sup>43</sup> had six repeat Transfer Orders<sup>44</sup> placed on their Communications Services within the space of five weeks, despite never having given consent to the Parties to place them. The final Transfer Order resulted in the Customer's Communications Services being transferred to the Parties. The Parties did not provide Ofcom with any evidence to show that they had obtained consent from the Customer to place the Transfer Orders.
  - One Customer<sup>45</sup> had four repeat Transfer Orders<sup>46</sup> submitted on their Communications Services, three of which were placed over a period of five days. The final Transfer Order resulted in the Customer's Communications Services being successfully transferred to the Parties. The Parties did not provide Ofcom with any evidence to show that they had obtained consent from the Customer to place the Transfer Orders.
  - One Customer<sup>47</sup> had four repeat Transfer Orders<sup>48</sup> placed on their Communications Services over the period of seven days. Three of which were placed over three consecutive days. The final Transfer Order was successfully cancelled by the Losing Provider. The Parties did not provide Ofcom with any evidence to show that they had obtained consent from the Customer to place the Transfer Orders.

## Ofcom's findings under GC C7.3(a)

### Ofcom's provisional findings

- 3.80 In light of the above, Ofcom's provisional findings were that the Parties contravened GC C7.3(a) in relation to its switching practices by engaging in Slamming in respect of at least

<sup>43</sup> Ofcom Reference [§<].

<sup>44</sup> There was a total of seven Transfer Orders placed on the Customers Communications Services.

<sup>45</sup> Ofcom Reference [§<].

<sup>46</sup> There was a total of five Transfer Orders placed on the Customers Communications Services.

<sup>47</sup> Ofcom Reference [§<].

<sup>48</sup> There was a total of five Transfer Orders placed on the Customers Communications Services.

110 Customers, by placing Transfer Orders on their Communications Services without their express knowledge and/or consent.

- 3.81 Additionally, Ofcom also provisionally found that the Parties contravened GC C7(a) in respect of 90 Customers, by placing at least 237 repeat Transfer Orders on their CLI's, following the cancellation of the initial Transfer Order by the Losing Provider, without first contacting the Customer and obtaining their consent to place a new Transfer Order.

#### The Parties' Representations

- 3.82 In their Representations, the Parties [§]. They also stated:

"[§]."

- 3.83 [§].

- 3.84 In their Third Response, the Parties also stated:

"[§]."

#### Ofcom's considerations and decision

- 3.85 Ofcom notes that the Parties disputed its provisional findings that they had breached GC C7.3(a) in respect of 110 Customers by engaging in Slamming. Ofcom also notes the protocols which the Parties claim they follow before boarding any new customers. The Parties failed to provide any evidence to substantiate their argument that they did not engage in Slamming with respect to the 110 Customers, and also that they followed the listed protocols. Accordingly, Ofcom remains satisfied that the Parties contravened GC C7.3(a) in respect of all 110 Customers.
- 3.86 Ofcom also notes that the Parties stated that they did not provide any Communications Services in respect of 44 of those 110 Customers.
- 3.87 In terms of the 44 Customers, Ofcom carefully considered the Parties Representations and evidence relating to those Customers. The Openreach Transfer Data shows that at least one Transfer Order was placed on each of the 44 Customers' CLI's during the Relevant Period, but that the Transfer Orders were successfully cancelled by the Losing CP. Therefore, the Customers' Communications Services were not successfully transferred to the Parties.
- 3.88 As noted at paragraph 3.7, a CP can be regarded as having engaged in Slamming when they submit a Transfer Order on a customer's CLI without the customer's consent, regardless of whether or not the transfer is actually successful (i.e. whether or not the customer's Communications Services are transferred to that CP).
- 3.89 On this basis, Ofcom therefore remains of the view that, even though the 44 Customers CLI's were not successfully transferred to the Parties, Slamming still occurred as the Transfer Orders were placed without the Customers' prior knowledge and/or consent.

#### Final decision

- 3.90 In contravention of GC C7.3(a), the Parties engaged in Slamming in respect of at least 110 Customers, by placing Transfer Orders on their Communications Services without their express knowledge and/or consent. This resulted in 66<sup>49</sup> Customers having their CLI's successfully transferred to the Parties without their knowledge and/or consent.<sup>50</sup>
- 3.91 Additionally, the Parties also contravened GC C7(a) by placing at least 237 repeat Transfer Orders on 90 Customers' CLI's following the cancellation of the initial Transfer Order by the Losing Provider, without first contacting the Customer and obtaining their consent to place a new Transfer Order.<sup>51</sup>

## Contravention of GC C7.7

### Failure to create and retain a Record of Consent

- 3.92 Where a Gaining Provider places a Transfer Order on a customer's services, the Gaining Provider must create and keep the Records of Consent that authorised the Transfer Order, irrespective of whether it was subsequently cancelled. This is because GC C7.8 provides that a Gaining Provider must create and retain the Records of Consent in accordance with GC C7.7 "*irrespective of whether the contract for the provision of the Relevant Communications Services is cancelled or terminated within the minimum twelve-month period specified in Condition C7.7.*"
- 3.93 Further, as stated above<sup>52</sup>, Ofcom would expect a separate Record of Consent for every Transfer Order submitted by a CP, even where consent was given by the Customer, for the initial Transfer Order. For example, if a CP places three Transfer Orders on one Customer's CLI, Ofcom would expect that CP to create and keep three separate direct Records of Consent, one for each Transfer Order made.
- 3.94 GC C7.7 also states that CPs must keep direct Records of Consent for a period of at least 12-months.<sup>53</sup> Ofcom's First Notice requested copies of all direct Records of Consent for all the Transfer Orders for Communications Services submitted by the Parties during the Relevant Period.<sup>54</sup> As the First Notice was sent on 16 January 2020, Ofcom would have expected the Parties to have had in their possession, at receipt of the Notice, the direct Records of Consent of all Transfer Orders made from at least 17 January 2019 to 31 December 2019.
- 3.95 The Openreach Transfer Data showed that the Parties placed a total of 375 Transfer Orders on 110 Customers CLI's during the Relevant Period. Of those 375 Transfer Orders, two

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<sup>49</sup> In the Provisional Notification, Ofcom noted that 67 Customers' CLI's were successfully transferred to the Parties as a result of the Transfer Order placed by the Parties. Following a review, Ofcom noted that one Customer's CLI was not successfully transferred to the Parties and has therefore amended the number to 66 to reflect this. See FN 38.

<sup>50</sup> Of those, Ofcom has found that Guaranteed Telecom contravened in respect of 43 Customers and Met Technologies in respect of 67.

<sup>51</sup> Of those, Ofcom has found Guaranteed Telecom contravened in respect of 64 repeat Transfer Orders, placed on 29 Customers Communications Services, and Met Technologies contravened in respect of 173 repeat Transfer Orders, placed on 61 Customers Communications Services.

<sup>52</sup> See paragraph 3.68.

<sup>53</sup> See paragraph 3.9

<sup>54</sup> See Annex 2.



were placed before the 17 January 2019.<sup>55</sup> Therefore, Ofcom would have expected the Parties to have provided 373 direct Records of Consent to correspond with each of the Transfer Orders placed on those Customer CLI's.

- 3.96 In their response, the Parties provided 27 Records of Consent that corresponded with those Customers CLI's, and which related to Transfer Orders placed before 17 January 2019.<sup>56</sup> This means that the Parties did not provide Records of Consent for the remaining 346 Transfer Orders placed between 17 January 2019 and 31 December 2019.

### **Ofcom's findings under GC C7.7**

#### Ofcom's provisional findings

- 3.97 Ofcom's provisional findings were that the Parties contravened GC C7.7 by failing to create and keep 346 direct Records of Consent during the Relevant Period.

#### The Parties' Representations

- 3.98 In their Representations, the Parties denied any failure to create any Records of Consent. They also stated that:

"[redacted]"

- 3.99 The Parties elaborated that [redacted]. The Parties also stated that [redacted].<sup>57</sup>

#### Ofcom's considerations and decision

- 3.100 Ofcom notes that the First Notice, which required the Parties to provide Records of Consent for all Transfer Orders placed during the Relevant Period, was sent on 16 January 2020. The Parties responded to the First Notice on 7 and 14 February.<sup>58</sup> These dates are before both the start of the Covid-19 pandemic lockdowns<sup>59</sup> and the May 2020 cyclone that the Parties referred to in their Representations.

- 3.101 On this basis, Ofcom therefore remains satisfied that the Parties contravened GC C7.7.

#### Final decision

- 3.102 The Parties contravened GC C7.7 by failing to create and keep 346 direct Records of Consent during the Relevant Period.<sup>60</sup>

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<sup>55</sup> Both Transfer Orders were placed on the same Customers CLI (Ofcom Reference [redacted]). The Parties provided one Record of Consent which corresponded with that Customer's CLI.

<sup>56</sup> The Parties provided a total of 28 direct Records of Consent, however, one of those Records of Consent corresponded with the Customer referenced in FN 55 above, and therefore related to a Transfer Order made before the 17 January 2019. For the purposes of this section, that Record of Consent has not been included in the calculation.

<sup>57</sup> [redacted].

<sup>58</sup> See Annex 2.

<sup>59</sup> West Bengal entered its first lockdown due to the Covid\_19 pandemic on 23 March 2020.

<sup>60</sup> Of those, Ofcom has found Guaranteed Telecom contravened in respect of 107 missing direct Records of Consent and Met Technologies in respect of 239.

## Contravention of GC C7.14(a)

### Use of Cancel Other

- 3.103 Ofcom has found that the Parties contravened GC C7.14(a) by not complying with the provisions of Annex 1 to GC C7 in respect of their use of Cancel Other on 52 Customers' CLIs during the Relevant Period.
- 3.104 As part of Ofcom's assessment of the Parties' compliance with Annex 1 to GC C7, Ofcom relied on the Customer complaints to the CCT during the Relevant Period, and the Openreach Transfer Data to reach its decision.
- 3.105 As stated above,<sup>61</sup> GC C7.14(a) requires that both the Gaining Provider and the Losing Provider must comply with the provisions of Annex 1 to Condition GC C7. Annex 1 sets out certain requirements that a CP must follow when using Cancel Other, including that:
- a Losing Provider can only use Cancel Other in certain circumstances, including where Slamming has occurred (paragraph 2); and
  - that before using Cancel Other, the Losing Provider shall take reasonable steps to establish that Slamming has actually taken place (paragraph 3).
- 3.106 The Openreach data showed that the Parties had applied Cancel Other in relation to 52 of the 110 Customers that Ofcom has determined were Slammed by the Parties, in cases where a Transfer Order had been placed by another CP. The reasons relied on by the Parties when using Cancel Other referred to Slamming having occurred.<sup>62</sup>
- 3.107 However, Ofcom noted that these 52 Customers had complained to the CCT about having been transferred to the Parties' Communications Services without their knowledge or consent and, in some cases, specifically about not being able to transfer back to their original CP, despite attempting to do so.<sup>63</sup> In Ofcom's view, this suggests that the Parties:
- used Cancel Other without the reasons listed in paragraph 2 of the Annex to Condition 7 having been met, specifically without Slamming having occurred; and
  - did not take reasonable steps to establish that Slamming had actually taken place before using Cancel Other on that basis, as required by paragraph 3 of Annex 1 to Condition 7.
- 3.108 Overall, Ofcom's view is that it is concerned that, having acquired the Customers by Slamming their Communications Services in the first instance, the Parties may have subsequently used Cancel Other to prevent those Customers from transferring away from them.

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<sup>61</sup> See paragraphs 3.16 to 3.20.

<sup>62</sup> The reasons relied on were "No authorisation given to transfer" or "End user not moving" - see Annex 4.

<sup>63</sup> 18 of those 52 Customers had initially agreed to have a transfer order placed on their CLI. However, Ofcom found that the Parties had contravened GC C7.7 in relation to those Customers' CLIs as the initial transfer order was cancelled by the Losing Provider and the Parties did not get authorisation to place a repeat transfer order on the Customers CLI. These Customers are referred to in paragraphs 3.64 to 3.70.

3.109 Ofcom also noted that Cancel Other was used by the Parties more than once on most of those Customers' CLIs, which meant that Customers were repeatedly prevented from switching their Communications Services away from them. In total, the Parties used Cancel Other 112 times on those 52 Customers' CLI.

*Table 2: Cancel Other used by the Parties*

Amount of times Cancel Other was used on a single CLI	Number of Customers affected
1	14
2	24
3	7
4	6
5	1
<b>112</b>	<b>52</b>

3.110 The evidence relating to each of these 52 Customers is set out in Annex 3. For illustration, we set out below the details of three of these cases:

- One Customer<sup>64</sup> had seven Transfer Orders placed on their CLI. Following the successful transfer of their Communications Services to the Parties, the Customer attempted to migrate to another CP on two occasions, but both times, Cancel Other was used by the Parties.<sup>65</sup>
- One Customer<sup>66</sup> had two Transfer Orders placed on their CLI within a week, which resulted in their Communications Services being successfully transferred to the Parties. Subsequently, the Customer attempted to transfer to another CP a total of five times, and each time the Parties used Cancel Other to stop the Transfer Orders.<sup>67</sup>
- Another Customer<sup>68</sup> had two Transfer Orders placed on their CLI 12 days apart, which resulted in their being successfully switched to the Parties. The Customer subsequently attempted to migrate to another CP two weeks after the transfer was completed but Cancel Other was used a total of four times.<sup>69</sup>

## Ofcom's findings under GC 7.14(a)

### Ofcom's provisional findings

<sup>64</sup> Ofcom Reference [redacted].

<sup>65</sup> On both occasions, the reason given by the Parties when using Cancel Other was "No authorisation given to transfer".

<sup>66</sup> Ofcom Reference [redacted].

<sup>67</sup> On all occasions, the reason given by the Parties when using Cancel Other was "No authorisation given to transfer".

<sup>68</sup> Ofcom Reference [redacted].

<sup>69</sup> On 3 occasions, the reason given by the Parties when using Cancel Other was "End user not moving" on one occasion the Parties used "No authorisation given to transfer".

3.111 Following its assessment of the evidence and information, Ofcom provisionally found that the Parties contravened GC C7.14(a) by using Cancel Other in a way that is not prescribed in the accompanying Annex 1 to GC C7, in respect of at least 52 Customers, and that they did so at least 112 times.

#### The Parties' Representations

3.112 In their Representations, the Parties stated:

"[REDACTED]."

3.113 Following the submission of their Representations, we issued the Parties with a Third Notice to clarify their Representations, specifically with regards to their use of the Cancel Other mechanism on the 52 Customers' CLI's.<sup>70</sup>

3.114 In their Third Response, the Parties stated, "[REDACTED]."

a) Service Issue – [REDACTED]:

"[REDACTED]."

b) Pricing Issue – the Parties stated:

"[REDACTED]."

c) Right Authorisation – the Parties stated that [REDACTED]. They elaborated by saying:

"[REDACTED]."

3.115 The Parties also provided two examples of when they used the Cancel Other mechanism [REDACTED]:

- Example 1:<sup>71</sup> [REDACTED].
- Example 2:<sup>72</sup> [REDACTED].

#### Ofcom's considerations and decision

3.116 We have carefully considered the Parties Representations as well as the further information provided in the Third Response.

3.117 With regards to the first two scenarios given by the Parties to explain why Cancel Other was used (service issues and pricing issues), Ofcom notes that these are not within the prescribed reasons for using Cancel Other, as set out in paragraph 2 of the Annex to GC C7. With regards to the third scenario, "right authorisation", the Parties provided no evidence that they used Cancel Other because they had established that Slamming and/or Failure to Cancel had occurred in relation to the above 52 Customers.

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<sup>70</sup> See Annex 2.

<sup>71</sup> Ofcom Reference [REDACTED].

<sup>72</sup> Ofcom Reference [REDACTED].

- 3.118 On this basis, Ofcom remains satisfied, for the reasons set out in paragraphs 3.106 to 3.109 above, that the Parties did not use the Cancel Other mechanism in a way that is prescribed in the accompanying Annex 1 to GC C7.
- 3.119 Ofcom has carefully considered the two examples provided by the Parties<sup>73</sup> as well as the relevant CCT Complaint and the Openreach Transfer Data associated with those Customers CLI's. Ofcom notes that the Openreach Transfer Data showed that the reason relied on by the Parties when using Cancel Other on both Customers' CLI's, referred to Slamming having occurred.<sup>74</sup> Cancel Other was used 3 times in relation to the Customer referred to in Example 1, and once in relation to the Customer referred to in Example 2. Ofcom notes that the Parties did not provide any evidence to substantiate the information they provided to Ofcom in relation to why they used the Cancel Other mechanism on those two Customers' CLI's. Therefore, Ofcom's assessment is that the Parties did not use the Cancel Other mechanism in the way prescribed in the accompanying Annex 1 to GC C7.
- 3.120 Based on the above, Ofcom remains satisfied that the Parties contravened GC C7.14(a) in relation to all 52 Customers.

#### Final decision

- 3.121 The Parties contravened GC C7.14(a) by using Cancel Other in a way that is not prescribed in the accompanying Annex 1 to GC C7, in respect of at least 52 Customers, and that they did so at least 112 times.<sup>75</sup>

#### **Ofcom's findings**

- 3.122 Ofcom's findings are that the Parties contravened a number of vital consumer protections that aim to ensure that CPs do not engage in Slamming.
- 3.123 The Parties engaged in Slamming by placing at least 110 Transfer Orders on Customers CLIs without their express knowledge and/or consent, in contravention of GC C7.3(a) during the Relevant Period. In at least 90 of the cases, the Parties placed a total of 237 repeat Transfer Orders on those Customers' CLI's. As a result, 66 of those Customers' Communications Services were transferred to the Parties.
- 3.124 Ofcom also finds that the Parties contravened GC C7.7 by failing to create and keep 346 individually retrievable direct Records of Consent during the Relevant Period.
- 3.125 Furthermore, Ofcom also finds that the Parties contravened GC C7.14(a) by not complying with the provisions of Annex 1 to GC C7 when applying Cancel Other on 112 occasions, in respect of 52 Customers who had attempted to switch from the Parties to another CP.
- 3.126 The Parties contravened all three GCs in respect of at least 51 Customers.<sup>76</sup>

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<sup>73</sup> See paragraph 3.115.

<sup>74</sup> The reason relied in relation to both Customers was "No authorisation given to transfer".

<sup>75</sup> Ofcom considers that Guaranteed Telecom did not comply with the requirements on the use of Cancel Other at least 63 times in respect of 27 Customers and Met Technologies did not comply with those requirements 25 times in respect of 49 Customers.

<sup>76</sup> Ofcom has found that Guaranteed Telecom contravened in respect of 27 of those Customers and Met Technologies in respect of 24.

## 4. Proposed penalty

### Summary

- 4.1 Ofcom has imposed a penalty of £10,000 on Guaranteed Telecom, and £25,000 on Met Technologies for contravening GC C7.3(a), GC C7.7, and GC C7.14(a), in relation to their switching practices during the Relevant Period, and require the Parties to take steps to ensure compliance with GCs going forward.
- 4.2 In reaching our decision as to the level of penalty imposed on each of Guaranteed Telecom and Met Technologies, Ofcom is of the view that, given the seriousness of the Parties' conduct and the seriousness of the contraventions, it is appropriate and proportionate to consider a fixed penalty for each of Guaranteed Telecom and Met Technologies.
- 4.3 In reaching this decision, Ofcom has had regard to the need to incentivise the Parties, as well as other CPs, to comply with their regulatory obligations and to our principal duty of furthering the interests of citizens and consumers. Ofcom's judgment is that this penalty is appropriate and proportionate to the contraventions we have found, and to have the appropriate deterrent effect on the Parties and CPs more generally. Further, we do not consider that a finding alone, including any reputational impact flowing from such a finding, would act as a sufficient deterrent for the Parties. (or the wider industry). When setting a penalty that would achieve that objective, we have considered the relevant factors in the round and have had regard to our Penalty Guidelines.<sup>77</sup>
- 4.4 In reaching our decision as to whether a penalty should be imposed and in calculating the amount of that penalty, we have taken into account the TSA's investigation in relation to the Parties' compliance with the Consumer Protection from Unfair Trading Regulations 2008. For the reasons set out in paragraph 3.27 above, our view is that Ofcom's investigation is sufficiently distinct from that of the TSA such that it remains appropriate and proportionate for the penalty of the level imposed in this Confirmation Decision to be imposed in relation to the contraventions found by Ofcom.
- 4.5 Our reasons for reaching this decision are set out fully below.

### Consideration of whether to impose a penalty

- 4.6 Ofcom's principal duty in carrying out our functions is to further the interests of citizens and consumers in relevant markets. GC C7 is an important GC, which aims to protect consumers during the switching process and provides important consumer protection provisions, which embody one of the most basic, fundamental rights of a consumer: that they can choose freely who they receive their Communications Services from.

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<sup>77</sup> Section 392 of the Act requires Ofcom to prepare and publish guidelines for determining penalties under sections 96A to 96C of the Act. Section 392(6) of the Act requires us to have regard to those guidelines when determining such penalties. The current version of the Penalty Guidelines was published on 14 September 2017:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf)

- 4.7 GC C7.3(a) prohibits Slamming, which is one of the most extreme forms of mis-selling, and one of the most serious contraventions of the GCs that can occur.<sup>78</sup> Consumers should not have to worry that they will be switched to a CP they have not chosen and subsequently have to pay bills to a CP that they did not agree to. Slamming undermines confidence and trust in the market and can ultimately discourage consumers from switching and engaging confidently.
- 4.8 When Slamming occurs, it can cause significant harm to affected consumers, irrespective of whether the Transfer Order is successful. This harm is compounded where the behaviour is repeated, when consumers are actually switched, and when consumers whose services have been Slammed are then prevented from migrating away from that CP.
- 4.9 In addition, the requirement for CPs to create and keep direct Records of Consent is an essential safeguard which ensures that CPs obtain consent before switching a consumer's Communications Services, and Ofcom considers non-compliance to be potentially as serious as the practice of Slamming itself.
- 4.10 This harm is further magnified where consumers are prevented from switching away from a CP after their Communications Services have been transferred as a result of Slamming. Whilst a Losing Provider can use Cancel Other to prevent a consumer from being Slammed, it must not use this as a means to prevent a consumer from switching, as set out in Annex 1 to GC C7.
- 4.11 Ofcom has determined that, in this case, it is appropriate and proportionate to impose a penalty as the Parties have contravened important consumer protection provisions, that are designed to protect consumers from harm and distress and to maintain trust in the integrity of CPs. The severity of the contraventions is magnified by the fact that the Parties contravened the GCs that not only prohibit Slamming, but that also put in place multiple safeguards to ensure that consumers are not switched without their consent.
- 4.12 We consider that the penalty which we have imposed on the Parties is an appropriate course of action to secure Ofcom's objective of furthering the interests of citizens and consumers by incentivising the Parties and other CPs to comply with their regulatory obligations.

## Penalty amount

- 4.13 In considering the level of penalty which we have imposed, Ofcom has had regard to its published Penalty Guidelines.

## Deterrence

- 4.14 As set out in the Penalty Guidelines, our central objective in imposing a penalty is deterrence. The level of the penalty must be sufficient to have a material impact on the regulated body so that it is incentivised to put in place procedures and processes to ensure

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<sup>78</sup> We set out our position in paragraph 5.22 of our Confirmation Decision to True Telecom [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/108885/true-telecom-confirmation-decision.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/108885/true-telecom-confirmation-decision.pdf)

that it is and remains compliant with regulatory requirements, and avoids contravening those requirements in the future.

- 4.15 Any penalty we set should therefore be sufficiently high to discourage misconduct and encourage good practices and a culture of compliance across the organisations.
- 4.16 A relevant factor in securing this objective of deterrence is the turnover of the regulated body subject to the penalty. Penalties should be set at levels which, having regard to that turnover, will have an impact on the body that deters it from misconduct in future and which provides signals to other bodies that misconduct by them would result in penalties having a similar impact. In the Fourth Response Ofcom was provided with the following information:
- The turnover for the relevant business, Guaranteed Telecom, during the period 1 April 2020 to 31 March 2021 was £ [X].
  - The turnover for the relevant business, Met Technologies, during the period 1 April 2020 to 31 March 2021 was £ [X].
- 4.17 Under section 97 of the Act, the maximum penalty Ofcom may impose on the Parties is 10 per cent of the turnover for the relevant business for the period 1 April 2020 to 31 March 2021.<sup>79</sup> The maximum penalty we may therefore impose on the Parties in respect of the contraventions is:
- Guaranteed Telecom - £ [X].
  - Met Technologies - £ [X].
- 4.18 We consider that the penalty which we have imposed is sufficiently high to ensure that it is a deterrent, having regard to Parties size and turnover, and is at such a level which can change any potential non-compliant behaviour by the Parties, and by other regulated entities.
- 4.19 To assess the amount of the penalty that might serve as an effective deterrent to prevent further wrongdoing, we have taken into account the seriousness of the contraventions and previous enforcement action that Ofcom has taken against other CPs on the same matters.
- 4.20 Ofcom has imposed a number of financial penalties on CPs for previous contraventions of the rules in relation to switching, and in particular, provisions which prohibit or safeguard consumers from Slamming (some of which are discussed in more detail in paragraph 4.39 below). This includes a penalty of £35,000 on Onestream Limited in December 2019, £300,000 on True Telecom Limited in November 2017, and £60,000 on Supatel Limited in September 2013.
- 4.21 Besides Onestream, these penalties were all issued before Ofcom updated its Penalty Guidelines in September 2017 to provide it with the flexibility to impose higher penalties in appropriate cases in order for a deterrent effect to be achieved.<sup>80</sup>

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<sup>79</sup> Given that the s96A Notification is was issued in the 2021-2022 financial year, this is the relevant period for the purposes of calculating the maximum penalty, as defined in section 97(5) of the Act.

<sup>80</sup> Penalty Guidelines, paragraph 1.8.



## Seriousness, culpability, and harm

### Seriousness

- 4.22 For the reasons set out above, GC C7.3(a), GC C7.7 and GC C7.14(a) are all important consumer protection provisions and any contravention of them is therefore potentially serious, particularly where a significant number of consumers are affected or where repeated attempts are made to take over a line without the customer's express knowledge and/or consent. Again, the provisions all reflect the fundamental premise that CPs should not engage in Slamming.
- 4.23 In this case, Ofcom has concluded that the Parties engaged in Slamming by systematically placing Transfer Orders on at least 110 Customers' CLIs with the aim of transferring their Communications Services from their current CP without the Customers' express knowledge and/or consent.
- 4.24 In addition, the placing of repeat Transfer Orders was common, and at least 90 of those Customers were subject to repeated and sustained efforts by the Parties to switch their services despite these Transfer Orders being cancelled by the Losing Provider at the request of the Customer. There were at least 237 repeat Transfer Orders placed on those 90 Customers' CLIs.
- 4.25 Also relevant is the fact that the Parties failed to create and keep at least 346 direct Records of Consent during the Relevant Period.
- 4.26 For a significant number of Customers that subsequently attempted to switch away from the Parties following their Communications Services being Slammed, the Parties prevented the transfers by using Cancel Other. The Openreach Transfer Data showed that the Parties used Cancel Other to cancel Transfer Orders at least 112 times on 52 Customers' CLIs. Ofcom has found that this was common practice by the Parties as a means to prevent Customers from switching away, particularly when they had been Slammed by the Parties in the first instance.
- 4.27 Whilst the relevant GCs that Ofcom has determined were contravened by the Parties are individually vital in protecting consumers, we note that they also work together as a multi-layered protection arrangement to protect consumers. The Parties contravened all three GCs in respect of at least 51 Customers. In Ofcom's view, breach of the multiple safeguards put in place to protect consumers from Slamming exacerbates the seriousness of the contraventions.
- 4.28 Our final decision is that the Parties' contravention of GC C7.3(a), GC C7.7 and GC C7.14(a) were serious.

### Degree of harm

- 4.29 Ofcom has also taken account of the degree of harm that would have been suffered by Customers. Slamming is liable to cause significant consumer harm, including distress, anxiety, financial harm as well as spending time and effort trying to resolve the situation. This harm may be compounded where customers are actually transferred between CPs as

a result of Slamming and/or CPs are engaging in repeated attempts to transfer Customer without their express knowledge and/or consent.

- 4.30 In our view, contravention of just one of GC C7.3(a), GC C7.7 and GC C7.14(a) has the potential of causing significant harm to consumers, however, where all three layers of protection were contravened, the harm may have been felt more acutely by those Customers.
- 4.31 In particular, Ofcom considers that the degree of harm is significantly exacerbated where Customers had not only been initially Slammed by the Parties but were then also prevented by them from switching away at their will. This is likely to have caused Customers considerable distress and anxiety, as well as the added burden of trying to switch away from the very CP that had Slammed their services in the first place. As stated at paragraph 4.27, the Parties contravened all three GCs in respect of at least 51 Customers.
- 4.32 In some instances, it appears that the Customers' distress was further intensified by the actions of the Parties. We refer to two of these cases for illustration:<sup>81</sup>
- One Customer<sup>82</sup> called the CCT on behalf of their late father. Whilst in the process of transferring the bills into their mother's name, the Customer noted that Zoom Telecom had taken over the Communications Services. The caller was in the process of transferring the Communications Services to another CP but stated that Zoom Telecom had requested either payment of £82 or a death certificate in order to release the line. Openreach Transfer Data showed that there were seven Transfer Orders placed on the CLI before it was successfully transferred. Ofcom was not provided with any Records of Consent as evidence that the account holder had consented to the transfer of their Communications Services.<sup>83</sup>
  - Another Customer<sup>84</sup> stated to the CCT that she had received a sales call from an agent who stated they were calling from Met Technologies, but she did not agree to switch. The Customers line was however transferred and upon speaking to Met Technologies she was advised that she had to pay an Early Termination Charge of £339. Ofcom was not provided with any Records of Consent for the CLI.<sup>85</sup>
- 4.33 Ofcom also identified that 30 of the 110 Customers who had unsolicited Transfer Orders placed on their Communications Services by the Parties, were either elderly and/or vulnerable. 25 of the complaints made to the CCT were made by someone on behalf of their elderly and/or vulnerable relative.

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<sup>81</sup> The evidence relating to each of these Customers is set out in Annex 3.

<sup>82</sup> Ofcom Reference [redacted].

<sup>83</sup> At the date of the Openreach Response, the Customers services were still with the Parties.

<sup>84</sup> Ofcom Reference [redacted].

<sup>85</sup> The Customer successfully switched away from the Met Technologies on 13 August 2019.

### Whether appropriate steps were taken to prevent the contravention and whether senior management should have been aware

4.34 As stated above, Ofcom has determined that, during the Relevant Period, Transfer Orders were placed on at least 82 Customers' CLI's, without their prior express knowledge and/or consent, and 28 Customers who had originally agreed to a transfer that was subsequently cancelled, had further Transfer Orders placed on their CLIs without their express knowledge and/or consent. Ofcom considers that the high number of unsolicited Transfer Orders placed on Customers CLI's, and the seriousness of the contravention, indicates that appropriate steps were not taken to ensure that Customers' Communications Services were not transferred as a result of Slamming.

### Whether the Parties took timely and effective steps to end and remedy the contravention

4.35 A letter sent by the Parties legal representatives on 9 December 2019 (see Annex 2), [redacted].

4.36 [redacted].

4.37 Ofcom considers that the Parties would therefore have been aware of the complaints made by customers in relation to Slamming and therefore considers that the Parties should have taken proactive steps to investigate any potential contraventions and take appropriate steps to prevent such contraventions occurring. The fact that there was a rise in consumer complaints between May and August 2019, suggests that the Parties did not take these proactive steps.

### History of contraventions

4.38 The Parties has no history of contraventions of the GCs.

### Precedents

4.39 As set out in our Penalty Guidelines, Ofcom will have regard to any relevant precedents set by previous cases where they are relevant.<sup>86</sup> As explained above, Ofcom has previously issued three decisions finding CPs in contravention of the the rules in relation to switching, and in particular, provisions which protect consumers from Slamming. In determining the penalty in this case, we have had particular regard to the following cases:

- Ofcom imposed a penalty on Onestream in 2019<sup>87</sup> for contravening GC C7.3(a) by Slamming at least 118 customers, many of whom had multiple repeat Transfer Orders placed on their Communications Services. In this case there was evidence that Onestream put in place a policy to place repeat Transfer Orders on customers services without first obtaining their permission. There was also evidence that Onestream had cancelled twelve Transfer Orders where customers had attempted to switch away

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<sup>86</sup> Penalty Guidelines, paragraphs 1.7 and 1.14.

<sup>87</sup> [Investigation into Onestream's compliance with mis-selling and slamming rules - Ofcom](#)

from Onestream after being initially Slammed. The penalty imposed on Onestream was £35,000. (1% of its Relevant Turnover).<sup>88</sup>

- In November 2017,<sup>89</sup> Ofcom imposed a penalty on True Telecom<sup>90</sup> for contraventions of GC22.3(d), GC22.8 and GC9.4.<sup>91</sup> Specifically, True Telecom engaged in Slamming by placing initial Transfer Orders without the customer's express knowledge and/or consent in respect of 26 customers; and by placing repeat Transfer Orders without the customer's express knowledge and/or consent for 90 CLIs in respect of 86 customers. The penalty reflected the size and the seriousness of the contravention, notably that many of the customers were elderly and/or vulnerable. The penalty also reflected that True Telecom did not appear to have effective policies and procedures in place to train its staff about Slamming and to ensure its staff were complying with GC22.3(d). The penalty imposed was £300,000 (1% of its Relevant Turnover).
- Ofcom imposed a penalty on Supatel<sup>92</sup> in 2013 for placing repeat Transfer Orders for 87 CLIs, 83 of which occurred over a period of two months. The penalty reflected Supatel's lack of effective documented policies and procedures for training on, securing, monitoring and auditing compliance with GC24.3(d)<sup>93</sup>, the degree of relevant knowledge, responsibility and recklessness on the part of Supatel's senior management; and Supatel's failure to take adequate appropriate steps in all circumstances to prevent the contravention from occurring. The penalty imposed was £60,000 (1% of its Relevant Turnover).

4.40 We note that the previous penalties imposed on True Telecom and Supatel were issued before Ofcom updated its Penalty Guidelines in September 2017 to provide it with the flexibility to impose higher penalties in appropriate cases in order for a deterrent effect to be achieved.

4.41 In this case, Ofcom has determined that the Parties systematically placed Transfer Orders on a significant number of Customers' Communications Services over a long period of time, and in the majority of cases they did so repeatedly. Their Slamming practices led to 66 Customers being successfully transferred to the Parties without their knowledge and/or consent. Furthermore, the Parties also attempted to prevent Customers from switching to another CP after having been initially Slammed by them. The Parties contravened all three GCs in respect of 51 Customers Communications Services. Given the seriousness of the contraventions, the significant harm caused to consumers, and the fact that the Parties

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<sup>88</sup> This included a 30% discount which was applied to the penalty figure of £50,000 as a result of Onestream admitting liability and entering into settlement with Ofcom.

<sup>89</sup> While the final decision in the True Telecom case was issued on 16 November 2017, the provisional penalty was set on 1 August 2017 before the Penalty Guidelines were updated.

<sup>90</sup> [Own-initiative investigation into True Telecom's compliance with GC22, GC9 and relevant consumer protection legislation - Ofcom](#)

<sup>91</sup> GC22.3(d) refers to the previous Slamming rules, GC22.8 refers to the previous rules for failing to create and retain relevant records of consent, and GC9.4 relates to entering consumers into contracts that exceeded 24 months and including terms requiring them to pay early termination charges for the period following the initial commitment period.

<sup>92</sup> [Own-initiative investigation into Supatel Limited, trading as TimeTalk, concerning its compliance with General Condition 24 – Sales and Marketing of Fixed-Line Telecommunications Services - Ofcom](#)

<sup>93</sup> GC24.3(d) relates to the previous Slamming rules.

breached several GCs, Ofcom considers it to be appropriate in this case to issue a sufficiently high penalty.

## **Co-operation with Ofcom's Investigation**

4.42 The Parties generally provided Ofcom with information in a timely manner in response to information requests issued under section 135 of the Act.

## **Ofcom's conclusion on the penalty amount**

4.43 In reaching our decision as to the level of penalty imposed on each of Guaranteed Telecom and Met Technologies, Ofcom is of the view that, given the seriousness of the Parties' conduct and the seriousness of the contraventions, it is appropriate and proportionate to consider a fixed penalty for each of Guaranteed Telecom and Met Technologies.

4.44 Considering all of the above factors in the round, the penalty we have imposed on Guaranteed Telecom is £10,000 and on Met Technologies is £25,000, (£35,000 in total) in respect of their contraventions of GC C7.3(a), GC C7.7 and GC C7.14(a).

4.45 Ofcom's regulatory judgment is that this is an appropriate and proportionate penalty, taking into account the overall seriousness of the contraventions we have found, and the harm caused by the contraventions on Customers.

4.46 Furthermore, the level of penalty is, in our view at such a level which can change any potential non-compliant behaviour by the Parties and other CPs. The provisions which safeguard consumers against Slamming are important consumer protection rules and it is important that CPs ensure they are compliant with their regulatory obligations relating to switching.

4.47 We have not seen any evidence that the Parties have taken steps to remedy the contravention.

4.48 Our judgement is that a penalty at this level is not disproportionate and does not exceed the maximum penalty Ofcom may impose.

## **Actions required of the Parties**

4.49 The steps which we consider must be taken by the Parties to the extent they have not already been taken, to comply with the requirements of GC C7.3(a), GC C7.7 and GC C7.14(a) are set out below:

- i) To review and make any necessary changes to policies and procedures to ensure that:
  - a. the Parties only place Transfer Orders where the customer has express knowledge and has given their express consent to a Transfer Order being placed;

- b. where a Transfer Order is cancelled, the Parties must not place repeat Transfer Orders on that customer's services without the customer's express knowledge and consent for any repeat Transfer Order being placed;
  - c. the Parties ensure that direct Records of Consent are created and kept for the required minimum period of 12 months. This includes Records of Consent for Transfer Orders that were not successfully completed, as well as for any repeat Transfer Order placed; and
  - d. the Parties use Cancel Other in the appropriate manner as set out in Annex 1 to GC C7. This includes taking reasonable steps to establish that Slamming has taken place.
- ii) To provide appropriate training to all agents who are engaged in placing Transfer Orders for all the Parties Fixed-Line Telecommunications Services in order to ensure compliance with GC C7.3(a), GC C7.7 and GC C7.14(a).
  - iii) Each Party must also take the following steps in respect of those Customers, which Annex 3 identifies the relevant Party as having contravened GC C7.3(a), GC C7.7 or GC C7.14(a) in relation to, to the extent that they have not already taken them, to remedy the consequences of the contraventions:
    - a. for those Customers identified in Annex 3 that are still with the relevant Party, to take proactive steps to inform them that as a result of this Investigation, the relevant Party is required to allow them to terminate their contract with no payment of an ETC or disconnection fee; and
    - b. for all Customers identified in Annex 3 to take proactive steps to contact and inform them, that as a result of the Investigation, the relevant Party is required to refund them, in full, for any other costs incurred as a result of being Slammed, including payment of ETCs to their previous CP or the loss of upfront line rental which was paid to their previous CP.

4.50 The Parties need to comply with the requirements imposed on it by this Confirmation Decision as soon as possible and, in any event, not later than 3 months from the date of this Confirmation Decision.

# A1. Confirmation Decision to Met Technologies of contravention of General Conditions C7.3(a), C7.7 and C7.14(a) under s96C of the Communications Act 2003

## Section 96C of the Communications Act 2003

A1.2 Section 96C of the Communications Act 2003 (the “Act”) allows the Office of Communications (“Ofcom”) to issue a Decision (a “Confirmation Decision”) confirming the imposition requirements on a person where that person has been given a notification under section 96A of the Act, Ofcom has allowed that person an opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. Ofcom may not give a Confirmation Decision to a person unless, having considered any representations, it is satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.

A1.3 A Confirmation Decision:

- a) must be given to the person without delay;
- b) must include the reasons for the decision;
- c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act,<sup>94</sup> or may specify a period within which the person must comply with those requirements; and
- d) may require the person to pay:
  - (i) the penalty specified in the notification issued under section 96A of the Act, or
  - (ii) such lesser penalty as Ofcom consider appropriate in light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and may specify the period within which the penalty is to be paid.

## General Conditions

A1.4 Section 45(1) of the Act gives Ofcom the power to set conditions, including General Conditions, binding on the person to whom they are applied.

A1.5 The Schedule to a Notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, which took effect from 25 July 2003, set out the

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<sup>94</sup> Such requirements include the steps that Ofcom thinks should be taken by the person in order to remedy the consequences of a contravention of a condition.

General Conditions of Entitlement (the “General Conditions” or “GCs”) which applied to all Communications Providers (“CPs”) defined in each GC until 1 October 2018. The GCs were amended from time to time between 2003 and 2018 and, on 1 October 2018, a new set of GCs came into effect.

## General Condition C7.3(a)

A1.6 GC C7 sets out the rules on switching.

A1.7 GC C7.3 sets out obligations to prevent mis-selling. Specifically, GC C7.3(a) states that:

*“When selling or marketing Relevant Communications Services, the Regulated Provider that is the Gaining Provider must ensure that:*

*(i) it does not engage in Slamming;*

*(ii) [...]*

*(iii) [...].”*

A1.8 *“‘Slamming’ means where:*

*“(a) A request for a CPS<sup>95</sup>, WLR<sup>96</sup>, SMPF<sup>97</sup> and/or MPF<sup>98</sup> has been made;*

*[...]*

*(c) a Transfer Order<sup>99</sup> or a Working Line Takeover order has been placed on Openreach or on KCOM (as applicable), without the Switching Customer’s express knowledge and/or consent,*

*that is in the following circumstances:*

*(i) where the Switching Customer has never contacted, or has never been contacted by, the Gaining Provider;*

*(ii) where the Switching Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Fixed-line Telecommunications Services and/or DSL Broadband Services;*

*[...];”*

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<sup>95</sup> ‘CPS’ or ‘Carrier Pre-Selection’ means a facility which allows a Customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a Telephone Number.

<sup>96</sup> ‘WLR’ or ‘Wholesale Line Rental’ means a regulated wholesale service sold by a CP, which is used by the CP to provide retail Customers with exchange lines and, in turn, access to other narrowband telephony services (for example, telephone calls, facsimile and dial-up internet access).

<sup>97</sup> ‘SMPF’ or ‘Shared Metallic Path Facility’ means access to the non-voiceband frequencies of the MPF.

<sup>98</sup> ‘MPF’ or ‘Metallic Path Facility’ means a circuit comprising a pair of twisted metal wires between a Customer’s premises and a main distribution frame in a local access node that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey Signals when connected to an Electronic Communications Network.

<sup>99</sup> ‘Transfer Order’ is defined by the GCs as an order submitted by, or on behalf of, a Gaining Provider to Openreach, or KCOM, or other applicable wholesaler, requesting for the Target Line (as defined in the Act) to be transferred from the Losing Provider to the Gaining Provider. ‘Losing Provider’ means the CP from whom a Switching Customer is transferring.



## General Condition C7.7

A1.9 GC C7.7 requires that:

*“For each contract entered into with a Switching Customer for the provision of Relevant Communications Services, the Regulated Provider that is the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:*

*a) a direct record of consent, as provided by the Switching Customer, to:*

*migrate from the Relevant Communications Services supplied by the Regulated Provider that is the Losing Provider to the Relevant Communications Services supplied by the Gaining Provider; or, as relevant,*

*begin acquiring Relevant Communications Services over the Target Line;*

*b) a record a record of the explanation from the Regulated Provider that they are required to create a record of the Switching Customer’s consent;*

*c) the name and address of the Switching Customer;*

*d) the time, date and means by which the consent in sub-section (a) above was given;*

*e) where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;*

*f) the Target Address; and (g) where appropriate, the Calling Line Identification of the Target Line.”*

A1.10 GC C7.8 requires that:

*“The Regulated Provider that is the Gaining Provider shall keep the records in accordance with Condition C7.7 irrespective of whether the contract for the provision of the Relevant Communications Services is cancelled or terminated within the minimum twelve-month period specified in Condition C7.7.”*

## General Condition C7.14(a)

A1.11 GC C7.14 states that:

A1.12 *“Where the Regulated Provider is a Gaining Provider which elects to co-ordinate a Communications Provider Migration<sup>100</sup>, on behalf of a Switching Customer, and which does not involve a change of the location where the Relevant Communications Services are supplied:*

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<sup>100</sup> ‘Communications Migration Provider’ is defined in the GCs as *“a process by which a Switching Customer transfers from a Fixed-line Telecommunications Service and/or a DSL Broadband Service supplied by one Communications Provider operating on Openreach’s or KCOM’s Access Network to a Fixed-line Telecommunications Service and/or a DSL Broadband Service provided by another Communications Provider operating on Openreach’s or KCOM’s Access Network;”*.

*(a) both the Gaining Provider and the Regulated Provider that is the Losing Provider shall comply with the provisions of Annex 1 to this Condition;*

*[...]*

*[...]”*

A1.13 Annex 1 to GC C7, sets out the circumstances in which a Losing Provider is permitted to use Cancel Other. The relevant paragraphs of Annex 1 to GC C7 state:

*“2 The Losing Provider shall only be permitted to use Cancel Other in the following circumstances:*

*(a) where Slamming has occurred;*

*(b) at the Switching Customer’s request, where the Gaining Provider has failed to cancel the Transfer Order after being directed by the Customer to do so (‘Failure to Cancel’);*

*(c) where the telephone line is or will be, ceased during the transfer Period (‘Line Cease’);*

*for other specified reasons not related to a Switching Customer’s request to cancel a transfer, as agreed by the relevant industry forum and approved by Ofcom; and*

*(d) in such other circumstances as directed by Ofcom.*

*3 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.*

*4 After using Cancel Other, the Losing Provider shall confirm the cancellation of the order by Durable Medium to the Switching Customer, unless this is not possible or appropriate, including where the Switching Customer is deceased.*

*[...]”*

## **Subject of this Confirmation Decision**

A1.14 This Notification is addressed to Met Technologies Limited (“Met Technologies”), whose registered company number is 08127967, and whose registered office is 400 Crown House, North Circular Road, London, England, NW10 7PN.

## **Notification issued by Ofcom under section 96A of the Act**

A1.15 On 04 June 2021, Ofcom issued a notification under section 96A of the Act (the “Section 96A Notification”) to each of Guaranteed Telecom and Met Technologies as Ofcom had reasonable grounds for believing that, between 1 January 2019 and 31 December 2019 (the “Relevant Period”) each of Guaranteed Telecom and Met Technologies contravened:

a) C7.3(a) by engaging in Slamming by:

- i) placing Transfer Orders for the purposes of transferring Customers Communications Services without the Customers express knowledge and/or consent. Ofcom’s view is that Guaranteed Telecom and Met Technologies did this in respect of at least 43 and 67 Customers respectively.
    - ii) by placing repeat Transfer Orders following the cancellation of the initial Transfer Order by the Losing Provider, without first contacting the Customer to obtain their consent to place a new Transfer Order. Ofcom’s view is that Guaranteed Telecom and Met Technologies did this 64 and 173 times, in respect of 29 and 61 Customers respectively.
  - b) GC C7.7 by failing to create and keep 346 individually retrievable direct Records of Consent. Guaranteed Telecom and Met Technologies failed to do so 107 and 239 times, in respect of 43 and 67 Customers’ respectively, after placing Transfer Orders for those Customers’ Communications Services; and
  - c) GC C7.14(a) by using Cancel Other without taking reasonable steps to establish that Slamming had taken place, as required by paragraph 2 of Annex 1 to Condition GC C7. Guaranteed Telecom and Met Technologies did this on at least 63 and 49 occasions in respect of 27 and 25 Customers respectively.
- A1.16 The Section 96A Notification also specified the penalty that Ofcom was minded to impose on each of Guaranteed Telecom and Met Technologies in respect of the contraventions.
- A1.17 The Section 96A Notification allowed each of Guaranteed Telecom and Met Technologies the opportunity to make representations to Ofcom about the matters set out in the Section 96A Notification.

## Confirmation Decision under section 96C of the Act

- A1.18 Guaranteed Telecom and Met Technologies provided joint written representations on 02 July 2021 (the “Representations”). Subsequently, Ofcom issued each of Guaranteed Telecom and Met Technologies a request for information under s135 of the Act (the “Notice”), the purpose of which was to clarify their Representations. Guaranteed Telecom and Met Technologies provided a joint response to the Notice on 23 August 2021 (the “Notice Response”).
- A1.19 Ofcom has carefully considered the Representations, the Notice Response, and all the relevant evidence and, having done so, is satisfied that, during the Relevant Period, each of Guaranteed Telecom and Met Technologies contravened C7.3(a), GC C7.7 and GC C7.14(a) as follows:
- a) C7.3(a) by engaging in Slamming by:
    - i) placing Transfer Orders for the purposes of transferring Customers Communications Services without the Customers express knowledge and/or consent. Ofcom’s view is that Guaranteed Telecom and Met Technologies did this in respect of at least 43 and 67 Customers respectively.

- ii) by placing repeat Transfer Orders following the cancellation of the initial Transfer Order by the Losing Provider, without first contacting the Customer to obtain their consent to place a new Transfer Order. Ofcom's view is that Guaranteed Telecom and Met Technologies did this 64 and 173 times, in respect of 29 and 61 Customers respectively.
- b) GC C7.7 by failing to create and keep 346 individually retrievable direct Records of Consent. Guaranteed Telecom and Met Technologies failed to do so 107 and 239 times, in respect of 43 and 67 Customers' respectively, after placing Transfer Orders for those Customers' Communications Services; and
- c) GC C7.14(a) by using Cancel Other without taking reasonable steps to establish that Slamming had taken place, as required by paragraph 2 of Annex 1 to Condition GC C7. Guaranteed Telecom and Met Technologies did this on at least 63 and 49 occasions in respect of 27 and 25 Customers respectively.

A1.20 Accordingly, Ofcom has decided to give each of Guaranteed Telecom and Met Technologies a Confirmation Decision confirming their contravention of C7.3(a), GC C7.7 and GC C7.14(a) and our decision to impose a financial penalty of **£10,000** on Guaranteed Telecom and **£25,000** on Met Technologies (£35,000 in total) in respect of the contraventions.

A1.21 The extent of these contraventions and the reasons for Ofcom's determination are set out in the explanatory statement to which this Confirmation Decision is annexed.

## Steps that should be taken by each of Guaranteed Telecom and Met Technologies

A1.22 In order to comply with General Conditions relating to switching practices going forwards, and specifically with the requirements of GC C7.3(a), GC C7.7 and GC C7.14(a), each of Guaranteed Telecom and Met Technologies should, to the extent they have not already done so, take the following steps:

- i) To review and make any necessary changes to policies and procedures to ensure that:
  - a. each of Guaranteed Telecom and Met Technologies only places Transfer Orders where the Customer has express knowledge and has given their express consent to a Transfer Order being placed;
  - b. where a Transfer Order is cancelled, each of Guaranteed Telecom and Met Technologies must not place repeat Transfer Orders on that Customer's services without the Customer's express knowledge and consent for any repeat Transfer Order being placed;
  - c. each of Guaranteed Telecom and Met Technologies will ensure that direct Records of Consent are created and kept for the required minimum period of 12 months. This includes Records of Consent for Transfer Orders that were not successfully completed, as well as for any repeat Transfer Order placed; and

- d. each of Guaranteed Telecom and Met Technologies will use Cancel Other in the appropriate manner as set out in the accompanying Annex 1 to GC C7. This includes taking reasonable steps to establish that Slamming has taken place.
- ii) To provide appropriate training to all agents who are engaged in placing Transfer Orders for all Guaranteed Telecom's and Met Technologies' Fixed-Line Telecommunications Services in order to ensure compliance with GC C7.3(a), GC C7.7 and GC C7.14(a).
- iii) Each of Guaranteed Telecom and Met Technologies should also take the following steps in respect of those Customers which Annex 3 identifies them as having contravened GC C7.3(a), GC C7.7 or GC C7.14(a) in relation to, to the extent that they have not already taken them, to remedy the consequences of the contraventions:
  - a. for those Customers identified in Annex 3 that are still with Guaranteed Telecom or Met Technologies, to take proactive steps to inform them that as a result of this Investigation, Guaranteed Telecom or Met Technologies (as applicable) is required to allow them to terminate their contract with no payment of an ETC or disconnection fee; and
  - b. for all Customers identified in Annex 3 to take proactive steps to contact and inform them, that as a result of the Investigation, Guaranteed Telecom or Met Technologies (as applicable) are required to refund them, in full, for any other costs incurred as a result of being Slammed, including payment of ETCs to their previous CP or the loss of upfront line rental which was paid to their previous CP.

A1.23 Each of Guaranteed Telecom and Met Technologies need to comply with the requirements imposed by this Confirmation Decision as soon as possible and, in any event, not later than 3 months from the date of this Confirmation Decision.

A1.24 The duty to comply with any requirement imposed by a Confirmation Decision is enforceable in civil proceedings by Ofcom for an injunction, for specific performance or for any other appropriate remedy or relief.<sup>101</sup>

## Penalty

A1.25 Ofcom has determined that Guaranteed Telecom must pay a penalty of **£10,000** and Met Technologies must pay a penalty of **£25,000** (£35,000 in total) in respect of each of their contraventions of GC C7.3(a), GC C7.7 and GC C7.14(a) during the Relevant Period.

A1.26 Each of Guaranteed Telecom and Met Technologies have until 5pm on **14 January 2022** to pay Ofcom the penalty. If not paid within the period specified it can be recovered by Ofcom accordingly.<sup>102</sup>

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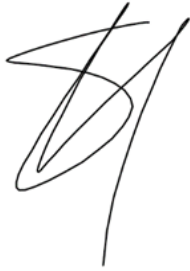
<sup>101</sup> Section 96C(6) Communications Act 2003.

<sup>102</sup> Section 96C(7) Communications Act 2003.

## Interpretation

A1.27 Words or expressions used in this Confirmation Decision have the same meaning as in the GCs or the Act except as otherwise stated in this Confirmation Decision.

**Samuel Hinkley, Ofcom**

A handwritten signature in black ink, consisting of several overlapping loops and a long vertical stroke extending downwards.

**12 November 2021**

## A2. Ofcom's investigation

### Background

#### Investigation by Windsor and Maidenhead Trading Standards

- A2.1 On 18 October 2019, Windsor and Maidenhead Trading Standards (TSA), who had been investigating the Parties in relation to concerns it had under the Consumer Protection from Unfair Trading Regulations 2008, secured voluntary undertakings, under the Enterprise Act 2002, which were signed by the Director of the Parties, [Director]. In particular, TSA's investigation related to concerns that the Parties had been taking money, via monthly direct debit from customers, without providing a service.<sup>103</sup>
- A2.2 The undertakings included requirements that the Parties remedy their behaviours and do not carry out misleading commercial practices.

#### Previous engagement with the Parties

- A2.3 Ofcom previously engaged with Zoom Telecom, which, at the time was a registered company, in June 2016, and Met Technologies, trading as Millenium Talk in July 2017. The engagement was informal and related to concerns relating to mis-selling and Slamming. On each occasion, complaints were not significantly high and immediately reduced upon engagement with the CPs, and therefore, we did not pursue further action.

#### The decision to investigate

- A2.4 Between May and October 2019, Ofcom saw a notable increase of complaints to the CCT in relation to the Parties, despite its previous engagement with them. Ofcom carried out an in-depth analysis of 338 complaints made between 03 June and 29 September 2019. Of the 338 complaints assessed, 316 customers had complained that their Communications Services had been switched without their consent.<sup>104</sup>
- A2.5 In accordance with Ofcom's Enforcement Guidelines and having regard to the administrative priority framework set out in those guidelines, Ofcom decided that it was appropriate to open an investigation into the Parties' compliance with their obligations as set out in GC C7.<sup>105</sup>
- A2.6 As such, Ofcom opened a formal investigation into the Parties on 20 November 2019.

#### Letter from the Parties

- A2.7 On 9 December 2019, the Parties legal representatives wrote to Ofcom on behalf of the Parties:

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<sup>103</sup> It also raised concerns that the Parties were engaging in Slamming and were appearing to target vulnerable consumers.

<sup>104</sup> The remaining complaints related to other concerns including mis-selling and high Early Termination Charges.

<sup>105</sup> [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01250](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01250).

- The letter noted that [REDACTED].
- The letter explained [REDACTED].
- It also [REDACTED].
- The letter also stated that [REDACTED].
- The letter noted that [REDACTED].

A2.8 Ofcom responded to the letter on 20 December 2019 explaining that [REDACTED]. It also explained that any sanction imposed would be under the GCs regulatory regime as opposed to the legislation relied on by the TSA.

## Information gathering

### Requests for information from the Parties

#### First Notice

- A2.9 On 16 January 2020, Ofcom sent the Parties formal requests for information under section 135 of the Act. The requests were sent separately to Met Technologies and Guaranteed Telecom but requested the same information from both Parties.
- A2.10 The information request required the Parties to provide information relating to all Transfer Orders placed by them during the Relevant Period, as well as complete call recordings of all sales and marketing calls as well as a copy of all direct records of consent sent to each Switching Customer, for all of the Transfer Orders for Communications Services submitted by the Parties during the Relevant Period.
- A2.11 In addition to its request for the call recordings, Ofcom also required the Parties to provide specific customer details which related to each call recording they provided. The details requested included, the Switching Customer's name, address, post code and account number.
- A2.12 The Parties provided information and documents in response to the request on 7 and 21 February 2020.
- A2.13 In their response, the Parties provided Ofcom with a total of 1092<sup>106</sup> call recordings and 718 welcome letters:
- 100 calls and 618 letters had been made/sent by Guaranteed Telecom; and
  - 700 call recordings and 392 welcome letters had been made/sent by Met Technologies.
- A2.14 The Parties' Legal Representatives explained in an email to Ofcom dated 13 February, that [REDACTED].

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<sup>106</sup> Of those, we were able to match 28 with the 110 Customer complaints we assessed to form our decision.



## **Second Notice**

A2.15 On 29 October 2020, Ofcom sent the Parties a second request for information. The purpose of the second notice was to request information relating to the Turnover of the Parties. The Parties responded on 19 November 2020.

## **Third Notice**

A2.16 Ofcom issued the Parties with a Notification under section 96A of the Act (the “Section 96A Notification”) on 4 June 2021. The Parties provided joint written representations on 2 July 2021 (the “Representations”).

A2.17 Subsequently, and for the purposes of gaining further understanding of the Parties’ Representations, Ofcom issued a third request for information to the Parties on 2 August 2021.

A2.18 The Third Notice sought to obtain additional information in relation to the Parties’ use of the Cancel Other mechanism (the mechanism that losing providers can use in specific situations to cancel a request to transfer a customer).

A2.19 Specifically, we asked the Parties to explain what steps they took to establish that Slamming and/or Failure to Cancel had taken place as well as any evidence they relied on. We also requested copies of any confirmation of cancellation of Transfer Orders that they may have sent to the Customers. Additionally, we asked the Parties to provide any internal policy documents setting out the circumstances in which Cancel Other should be used by them and the steps taken once a Cancel Other order is placed.

A2.20 The Parties responded on 23 August 2021.

## **Fourth Notice**

A2.21 On 15 October 2021, Ofcom sent the Parties a fourth request for information. The purpose of the fourth notice was to request information relating to the Turnover of the Parties. The Parties provided the information on 29 October 2021.

## **Request for information from Openreach**

A2.22 Ofcom issued a formal request for information to Openreach under section 135 of the Act on 3 March 2020, to which Openreach responded on 17 March 2020.

A2.23 Openreach is a wholly owned subsidiary of British Telecommunications Plc (BT), but is independently governed. It is required to ensure that all CPs have equal access to BTs local network, and it is responsible for installing and repairing these services. In doing so, Openreach retains the records of the services it provides to CPs using the local BT network, including “Transfer Order records” for each CP. These records provide details of the date on which a CP placed a Customer’s order for services (i.e. “their Transfer Order”) and the date on which those Transfer Orders were completed or cancelled.

A2.24 Openreach provided a spreadsheet with relevant Transfer Order data during the Relevant Period for all Transfer Orders placed by the Parties.<sup>107</sup> The spreadsheet included the following information: a) the date a Transfer Order was placed, b) the date a Transfer Order was cancelled by the Losing Provider, c) the date a Transfer Order was placed by another CP so that a Customer could switch away from the Parties, d) date Cancel Other was used by the Parties, and e) the reason which was submitted by the Parties when using Cancel Other.

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<sup>107</sup> Ofcom provided Openreach with a list of the RID Codes allocated to the Parties.

## A3. Contraventions

[~~8~~]

## A4. Openreach Transfer Data

[X]

## A5. Glossary

<b>The ‘Act’</b>	Communications Act 2003
<b>‘CLI’</b>	Call Line Identifications
<b>‘Communications Services’</b>	Refers to Fixed-Line Telecommunications Services and/DSL Broadband Services.
<b>‘CP’</b>	Communications Provider. ‘Communications Provider’ means a person who (within the meaning of section 32(4) of the Act) provides an Electronic Communications Network or an Electronic Communications Service.
<b>The ‘December Letter’</b>	The letter sent on behalf of the Parties by their Legal Representatives on 9 December 2019.
<b>‘Fixed-line Telecommunications Services’</b>	Narrowband calls and lines services (i.e. services provided over a traditional public communications network) that allow for the transfer of speech communications, and other forms of communications such as facsimile and data. ‘Broadband Service’ means any service which is capable of supporting an always-on connection at a fixed location that provides data at speeds greater than a dial-up connection, including all DSL (including FTTC) services, FTTP services and services provided over a Cable Network, but excluding any Leased Lines Service.
<b>‘First Notice’</b>	Ofcom’s information request issued under section 135 of the Act on 16 January 2020 to each of the Parties.
<b>‘First Response’</b>	The Parties’ response to Ofcom’s First Notice, on 7 and 21 February 2020.
<b>‘Fourth Notice’</b>	Ofcom’s information request issued under section 135 of the Act on 15 October 2021 to each of the Parties.
<b>‘Fourth Response’</b>	The Parties’ response to Ofcom’s First Notice, on 29 October 2021.
<b>‘General Conditions’ or ‘GCs’</b>	Ofcom’s General Conditions of Entitlement.
<b>‘Guaranteed Telecom’</b>	Guaranteed Telecom Limited.
<b>The ‘Investigation’</b>	The investigation Ofcom opened into the Parties compliance with GC C7(a), GC C7.7 and GC C7.14(a) on 10 November 2019.
<b>‘Met Technologies’</b>	Met Technologies Limited.
<b>‘Openreach Notice’</b>	Ofcom’s information request issued under section 135 of the Act on 3 March 2020 to Openreach.

<b>'Openreach Response'</b>	Openreach's response to Ofcom's Openreach Notice, sent on 17 March 2020.
<b>'Openreach Transfer Data'</b>	Information provided by Openreach in the Openreach Response, a copy of which is provided in Annex 4.
<b>The 'Parties'</b>	Guaranteed Telecom and Met Technologies, together referred to as the 'Parties'.
<b>'Third Notice'</b>	Ofcom's information request issued under section 135 of the Act on 2 August 2021 to the Parties.
<b>'Third Response'</b>	The Parties' response to Ofcom's Third Notice, dated 23 August 2021.
<b>'Transfer Order'</b>	An order submitted by, or on behalf of, a Gaining Provider to Openreach, or KCOM, or other applicable wholesaler, requesting for the Target Line to be transferred from the Losing Provider to the Gaining Provider.
<b>'Relevant Communications Services'</b>	The definition of which 'includes Fixed-line Telecommunications Services and/or Broadband Services – see GC C7.2.
<b>'Relevant Period'</b>	From 1 January 2019 to 31 December 2019.
<b>The 'Representations'</b>	The Parties joint written representations provided to Ofcom on 2 July 2021 in response to the Section 96A Notification.
<b>'RID'</b>	Reseller Identification Codes.
<b>'Second Notice'</b>	Ofcom's information request issued under section 135 of the Act on 29 October 2020 to the Parties.
<b>'Second Response'</b>	The Parties' response to Ofcom's Fourth Second Notice, dated 19 November 2020.
<b>'Section 96A Notification'</b>	The Provisional Decision Notification issued to the Parties on 4 June 2021.
<b>'Working Line Takeover Order'</b>	An order submitted by, or on behalf of, a Gaining Provider to Openreach or to KCOM (as applicable), requesting for the Working Line Takeover or the Target Line.