

31 July 2017

To:

Alastair Gilmartin Smith
Finance Director

Persons liable to pay administrative charges under section 38 of the Communications Act 2003

Direct line: 020 7981 3613

alastair.smith@ofcom.org.uk

Dear Sirs,

General Demand for information required by Ofcom under section 135 of the Communications Act 2003 and published in accordance with section 137 (6) of that Act for the purposes of calculating the administrative charge for each Charging Year

This is a formal demand for information under section 135 of the Communications Act 2003 (the "Act"), which demand is addressed to each and every person who is liable to pay administrative charges under section 38 of the Act.

This formal demand is hereby published on Ofcom's website for the purpose of bringing it to the attention of such persons from whom the information is required in the manner and form specified below for the purpose of ascertaining or verifying the charges payable by a person under section 38 of the Act, which information must be provided annually as set out below.

Background to this General Demand

Ofcom is funded by (among other things) administrative charges payable by each and every person who is liable to charges under Ofcom's Notice of Designation pursuant to section 38 of the Act, as made by Ofcom from time to time. Paragraph 6 of the current Designation¹ provides that the following persons are liable to pay such charges-

"During each Charging Year, the Electronic Communications Network, Electronic Communications Service or Associated Facility which is designed for the purposes of section 38 of the Act is any Electronic Communications Network, Electronic Communications Service or Associated Facility where the person providing the Network or Service, or making available that Associated Facility had a Relevant Turnover from Relevant Activities of £5 million or more in the last but one Calendar year prior to the charging year in question. (For

¹ See Annex 1 to Ofcom's Final Statement entitled 'Designation and Relevant Activity Guidelines for the purposes of administrative charging' published on 31 March 2005.

example, if the relevant Charging Year commences on 1 April 2016, the relevant Turnover will be for the calendar year of 2014)."

That Designation gives the following meanings to the expressions used therein-

- 'Charging Year' means a twelve month period ending 31 March;
- 'Relevant Activity' means any of the following:
 - a. The provision of Electronic Communications Services to third parties;
 - b. The provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers;
 - or
 - c. The making available of Associated Facilities to Communications Providers;
- 'Relevant Turnover' means turnover made from carrying on any Relevant Activity after the deduction of sales rebates, value added tax and other taxes directly related to turnover.

In this context, we draw attention to our Guidelines on the definition of "relevant activity" for the purposes of administrative charging, which Guidelines are intended to help those persons liable to pay administrative charges to establish their gross turnover from relevant activities for the purposes of administrative charging.²

Ofcom's principles that apply in setting tariffs are set out in our Statement of Charging Principles as published from time to time. The tariff applicable will be a percentage of turnover from relevant activities as set out in the tariff tables, which are published by Ofcom on or before 31st March for the following charging year.³

Provision of specified information

You are required to provide Ofcom with the information specified or described in the Annex hereto in the manner and form specified. Any queries regarding this information should be directed to Nicholas Collins (Nicholas.Collins@ofcom.org.uk) in the Ofcom Market Intelligence Team.

The information must so be provided to Ofcom by **no later than 5pm on the last working day of September every year**, until further notice by Ofcom.

Offences

I draw your attention to sections 138 to 144 of the Act, as amended by The Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011 No. 1210),⁴ which set out, among other things, the offences created by the Act in connection with a failure to

² See Annex 2 to Ofcom's Final Statement published on 31 March 2005, *ibid*.

³ The tariff tables for each Charging Year are accessible at: <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans/tariff-tables>.

⁴ This legislation is accessible at: www.legislation.gov.uk.

comply with a requirement under section 135 or in connection with the provision of false information.

You are therefore required to ensure that your response is complete and accurate. Given the seriousness of the potential penalties and offences involved, you may want to seek your own independent legal advice about the contents of this General Demand.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Alastair Gilmartin Smith', with a stylized flourish at the end.

Alastair Gilmartin Smith

Finance Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002.

Annex

A. Definitions

'Charging Year' means every period of twelve months beginning on 1 April and ending on 31 March;

'Relevant Activity' means any of the following:

- a. the provision of Electronic Communications Services to third parties;
- b. the provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers; or
- c. the making available of Associated Facilities to Communications Providers;

'Relevant Calendar Year' means, in respect of a Charging Year, the twelve month period commencing on 1 January in the last but one calendar year prior to the Charging Year in question so that if, for example, the Charging Year commences on 1 April 2016, the Relevant Calendar Year will be the calendar year of 2014;

'Relevant Person' means a person (which includes a body of persons corporate or unincorporated) liable to pay the administrative charge under section 38 of the Act; and

'Relevant Turnover' means turnover made from carrying out activity after the deduction of sales rebates, value added tax and other taxes directly related to turnover.

B. Specified Information

The Relevant Person must for each Charging Year submit an annual certificate (see C. below) of turnover return providing details in relation to the following categories of information (known as an 'Annual Revenue Return')-

1. **Data Provider:** the full name of the Relevant Person;
2. **Return Schedule:** the Relevant Calendar Year which the return covers;
3. **Registered Number:** the registered company number of the Relevant Person (if applicable);
4. **Relevant Turnover:** the Relevant Turnover generated by the Relevant Person, broken down as follows:
 - a. Networks Turnover (£ thousands);
 - b. Services Turnover (£ thousands);
 - c. Associated Facilities Turnover (£ thousands);

- d. Non-Relevant Turnover (£ thousands);
 - e. Total Turnover (£ thousands);
5. **Other Information** supporting the information regarding movements between the prior year's Annual Revenue Return and the current year's Annual Revenue Return and a reconciliation between the Annual Revenue Return and the annual turnover as reported in the Relevant Person's audited financial statements.

C. Manner and Form

The information Specified in B. above must be provided to Ofcom by submitting an Annual Revenue Return electronically via Ofcom's secure Online Services Portal. Further information regarding the database and access to the database is set out in the document entitled 'Data Provider Userguide: Annual N&S Revenue Return' published on <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/general-demand-for-information>.

The information specified in B. above must be provided to Ofcom by electronically completing and certifying the Annual Revenue Return to the effect that the information has been accurately and properly prepared in accordance with Ofcom requirements and to confirm that the Financial Reporting Standards and Generally Accepted Accounting Practice in the UK have been followed in the preparation of the Return.

Contact details (i.e. name, e-mail address, postal address, phone, position) of the individual providing data for the Annual Revenue Return and the individual submitting the Annual Revenue Return (if different) must be provided. Certification should be provided by a Director if the Relevant Person is a limited company or by a Partner if the Relevant Person is a partnership. Certification shall serve as notification that the named Director or Partner has certified the details of the Relevant Turnover of the Relevant Person as accurate.

Once access has been provided to an individual and the individual is subsequently no longer associated with the Relevant Person, it is the responsibility of the Relevant Person to inform Ofcom of this via email to mid@ofcom.org.uk. This will allow Ofcom to remove the individual's association with the Relevant Person on Ofcom's system.