



Notification of Contravention of General Condition 24 under section 94 of the Communications Act 2003

Notice served on Sensim Telecom Ltd ("Sensim") by
the Office of Communications

**This is the non-confidential
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Confidential information has been
redacted. Redactions are indicated
by [X].

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Notification to Sensim of contravention of General Condition 24 under section 94 of the Communications Act 2003

Section 94 of the Communications Act 2003

- 1.1 Section 94 of the Communications Act 2003 (the “Act”) allows the Office of Communications (“Ofcom”) to issue a notification to a person where Ofcom has reasonable grounds for believing that that person is contravening or has contravened a condition set under section 45 of the Act.¹

General Condition 24

- 1.2 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.
- 1.3 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, sets out the General Conditions of Entitlement (the “General Conditions” or “GCs”) which apply to the Communications Providers (“CPs”) defined in each General Condition. The General Conditions have, from time to time, been amended.²
- 1.4 Ofcom introduced new sales and marketing rules as well as rules concerning the use of Cancel Other in a new General Condition 24 (“GC24”)³ which came into force on 18 March 2010 (see Annex 1 for the full text of GC24). Cancel Other is a consumer protection mechanism designed to ensure that customers are not transferred between CPs (“switched”) – without their express knowledge and/or consent.
- 1.5 GC24 applies to all CPs who sell fixed line telephone services to Domestic and Small Business Customers⁴ (the “Customers”) (see GC24.1).
- 1.6 GC24.14 requires that:

¹ The Electronic Communications and Wireless Telegraphy Regulations 2011 (the “2011 Regulations”) came into force on 26 May 2011 and include amendments to the Act. The transitional provisions state that the amendments to section 94 of the Act do not apply in relation to a contravention of a condition set under section 45 of the Communications Act 2003 which occurred before 26 May 2011 (and, in relation to a continuing contravention, do not apply in respect of any period of contravention before 26 May 2011). Sections 95 and 96 of the Act remain unchanged. Therefore the process set out in sections 94-6 of the Act (unamended) still applies to the contraventions of General Condition 24 set out in the current Notification. For further details see paragraphs 3.4-9.

² Up to date versions of the General Conditions are located on the Ofcom website at:

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

³ http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers_misselling/statement/satement.pdf

⁴ “Domestic and Small Business Customer” has the meaning set out in section 52 (6) of the Act:

“In this section “domestic and small business customer”, in relation to a public communications provider, means a customer of that provider who is neither –

(a) himself a communications provider; nor

(b) a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise)”.

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

- i) where Slamming has occurred;*
- ii) at the Customer’s request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so (“Failure to Cancel”);*
- iii) where the telephone line is, or will be, ceased during the Transfer Period (“Line Cease”);*
- iv) for other specified reasons not related to a Customer’s request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and*
- v) in such circumstances as defined by Ofcom.”*

1.7 GC24.15 requires that:

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

1.8 GC24.18 requires that:

“Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider.”

1.9 Sections 94 to 96 of the Act provide for the enforcement of conditions and give Ofcom powers to take action, including the imposition of penalties, against persons who contravene, or have contravened, a condition set under section 45 of the Act.

Subject of this Notification

1.10 This Notification is addressed to Sensim Telecom Limited, trading as Sensim (“Sensim”), whose registered company number is 05289856. Information provided to Ofcom suggests that Sensim commenced trading in January 2011.

Determination made by Ofcom

1.11 Ofcom hereby determines that there are reasonable grounds for believing that from 1 February 2011 to 25 May 2011 (the “Relevant Period”), Sensim has contravened GC24 and specifically the provisions relating to the use of Cancel Other under GC24.14, GC24.15 and GC24.18 by:

- i) failing to take reasonable steps to establish that Slamming and/or Failure to Cancel had actually taken place as required by GC24.15 before using Cancel Other in cases of Slamming and/or Failure to Cancel;*
- ii) using Cancel Other for reasons other than those specified as permissible in GC24.14; and*

- iii) where Sensim was the Losing Communications Provider (“Losing CP”), attempting to induce a Customer to terminate their contract with the Gaining Communications Provider (“Gaining CP”) and/or remain in a contract with Sensim, through the use of marketing statements or representations in its communications with the Customer, contrary to GC24.18.

1.12 The reasons for Ofcom’s determination are set out in the remainder of this document (hereby referred to as the “Explanatory Statement”).

Action required by Sensim

1.13 Sensim has until 5.00pm on **14 October 2011** (the “Deadline”):

- i) to comply with the requirements of GC24; and
- ii) to remedy the consequences of the notified contravention of GC24.

1.14 The steps Sensim can take to comply with the requirements of GC24 may include, but are not limited to:

- i) ensuring that when Cancel Other is used in respect of Slamming and/or Failure to Cancel, reasonable steps are taken to establish that Slamming and/or Failure to Cancel has actually taken place. Ofcom would expect Sensim to retain auditable records of the steps it has taken, and the evidence it has collected, prior to using Cancel Other, to satisfy itself that Slamming and/or Failure to Cancel has actually occurred;
- ii) ensuring that Cancel Other is only used in the permitted specified circumstances provided in GC24.14. Sensim should refer to the guidance published with GC24, and in particular paragraphs A6.37-44 for assistance in how to achieve this requirement (paragraphs A2.1-8 in Annex 2); and
- iii) ensuring that when communicating with Customers in order to comply with GC24, Sensim does not make any marketing statements or representations that may induce Customers to terminate their contract with the Gaining CP and/or remain in a contract with the Losing CP. This would include, but is not limited to, amending or removing sections from standard and specific correspondence sent by Sensim to Customers attempting to cancel a service with Sensim (see paragraph 6.25).

1.15 The steps Sensim can take to remedy any consequences arising from a contravention of GC24 may include, but are not limited to, allowing Customers to transfer to the CP of their choice, without charge (subject to contractual provisions and charges).

1.16 In the alternative, Sensim may, prior to the Deadline, make representations to Ofcom about how it proposes to remedy fully the consequences arising from its contraventions of GC24 by a specified date to be agreed with Ofcom. Ofcom is not bound to accept any proposal by Sensim as complying with the requirement to remedy fully any consequences of its contraventions of GC24 by the Deadline but will give any representation made due consideration.

1.17 If, by the Deadline, Sensim does not comply with GC24 and/or fails to remedy fully the consequences of its breach of GC24 as set out in the Notification and Explanatory Statement, Ofcom may issue an enforcement notification under section

95 of the Act and/or may impose a penalty, up to a maximum of 10 per cent of relevant turnover, on Sensim under section 96 of the Act.

Representations in response to this Notification

- 1.18 Sensim has until the Deadline to make representations to Ofcom about the matters set out in this Notification and the accompanying Explanatory Statement in relation to GC24. These representations should include an explanation of how Sensim is complying with GC24 and how it has remedied, or (to the extent steps remain to be taken after the Deadline) proposes to remedy, the consequences of the notified contraventions.

Interpretation

- 1.19 Words or expressions used in this Notification have the same meaning as in the General Conditions or the Act except as otherwise stated in this Notification.



Lynn Parker
Director, Consumer Protection
12 September 2011

Section 2

Executive Summary

- 2.1 Ofcom introduced new sales and marketing rules as well as rules concerning the use of Cancel Other in a new General Condition, GC24⁵, which came into force on 18 March 2010. Cancel Other is a consumer protection mechanism designed to ensure that Customers are not transferred between CPs – without their express knowledge and/or consent.
- 2.2 Section 94 of the Act allows Ofcom to issue a notification to a person where Ofcom has reasonable grounds for believing that that person is contravening and/or has contravened a condition set under section 45 of the Act.⁶
- 2.3 On 18 March 2010, Ofcom opened an own initiative investigation (the “Programme”) to monitor industry-wide compliance with GC24⁷ including the Cancel Other requirements.
- 2.4 Following a consumer complaint and representations from industry stakeholders that alleged mis-use of Cancel Other by Sensim, on 18 May 2011 Ofcom decided to conduct an investigation into Sensim’s compliance with GC24 (the “Investigation”). On 26 May 2011, we informed Sensim of our decision and issued it with a draft information request under section 135 of the Act (the “Information Request”).
- 2.5 In response to the final Information Request, Ofcom obtained evidence from Sensim that provides Ofcom with reasonable grounds to believe that during the Relevant Period, Sensim has contravened GC24.
- 2.6 Specifically, Ofcom believes that Sensim has contravened GC24 in the following ways:
- i) failing to take reasonable steps to establish that Slamming and/or Failure to Cancel⁸ had actually taken place as required by GC24.15 before using Cancel Other in cases of Slamming and/or Failure to Cancel;
 - ii) using Cancel Other for reasons other than those specified as permissible in GC24.14; and
 - iii) where Sensim was the Losing CP, attempting to induce a Customer to terminate their contract with the Gaining CP and/or remain in a contract with Sensim, through use of marketing statements or representations in its communications with Customers, contrary to GC24.18.
- 2.7 Accordingly, Sensim has until 5.00pm on **14 October 2011** (the “Deadline”):

⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers_misselling/statement/statement.pdf

⁶ See footnote 1 above with regards to changes by the 2011 Regulations.

⁷ See http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01045/

⁸ “Failure to Cancel” means where the Gaining CP has not cancelled a transfer, after a request from the Customer during the transfer period. See the first bullet point in A6.42 of the guidance published with GC24 (paragraph A2.6 in Annex 2).

- i) to make representations to Ofcom about the matters set out in the Notification and the Explanatory Statement;
 - ii) to comply with the requirements of GC24; and
 - iii) to remedy the consequences of the contravention.
- 2.8 Representations to Ofcom about the matters set out in the Notification and this accompanying Explanatory Statement should include an explanation of how Sensim is complying with GC24 and how it has remedied, or (to the extent steps remain to be taken after the Deadline) proposes to remedy, the consequences of the notified contraventions.
- 2.9 The steps Sensim can take to comply with the requirements of GC24 may include, but are not limited to:
 - i) ensuring that when Cancel Other is used in respect of Slamming and/or Failure to Cancel, reasonable steps are taken to establish that Slamming and/or Failure to Cancel has actually taken place. Ofcom would expect Sensim to retain auditable records of the steps it has taken, and the evidence it has collected, prior to using Cancel Other, to satisfy themselves that Slamming and/or Failure to Cancel has actually occurred;
 - ii) ensuring that Cancel Other is only used in the permitted specified circumstances in GC24.14. Sensim should refer to guidance published with GC24, and in particular paragraphs A6.37-44 for assistance in how to achieve this requirement (paragraphs A2.1-8 in Annex 2); and
 - iii) ensuring that when communicating with Customers in order to comply with GC24, Sensim does not make any marketing statements or representations that may induce Customers to terminate their contract with the Gaining CP and/or remain in a contract with the Losing CP. This would include, but is not limited to, amending or removing sections from standard and specific correspondence sent by Sensim to Customers attempting to cancel a service with Sensim (see paragraph 6.25).
- 2.10 The steps Sensim can take to remedy any consequences arising from a contravention of GC24 may include, but are not limited to, allowing Customers to transfer to the CP of their choice, without charge (subject to contractual provisions and charges).
- 2.11 In the alternative, Sensim may, prior to the Deadline, make representations to Ofcom about how it proposes to remedy fully the consequences arising from its notified contraventions of GC24 by a specified date to be agreed with Ofcom. Ofcom is not bound to accept any proposal by Sensim as complying with the requirement to remedy fully any consequences of its contraventions of GC24 by the Deadline but will give any representation made due consideration.
- 2.12 If, by the Deadline, Sensim does not comply with GC24 and/or fails to remedy fully the consequences of its breach of GC24 as set out in the Notification and Explanatory Statement, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a penalty, up to a maximum of 10 per cent of relevant turnover on Sensim under section 96 of the Act.

Section 3

Background

Legal and Regulatory Framework

- 3.1 Section 45 of the Act gives Ofcom the power to set conditions binding CPs (which section 405(1) of the Act defines to mean persons who provide an electronic communications network or electronic communications service).
- 3.2 On 22 July 2003, the Director General of Telecommunications issued a notification under section 48(1) of the Act setting, pursuant to section 45 of the Act, the General Conditions.
- 3.3 The General Conditions took effect from 25 July 2003 and each apply to those CPs defined in each General Condition, and have from time to time been amended. We set out below the General Conditions that Ofcom relies on in relation to this Notification.
- 3.4 Section 94 of the Act allows Ofcom to issue a notification to a person where Ofcom has reasonable grounds for believing that a person is contravening and/or has contravened a condition set under section 45 of the Act.
- 3.5 The 2011 Regulations⁹ came into force on 26 May 2011 and include amendments to the Act for the purpose of implementing Directives 2009/136/EC¹⁰ and 2009/140/EC.¹¹
- 3.6 Regulation 1 sets out the amendments to the Act by reference to Schedule 1. Paragraph 54 of Schedule 1 amends section 94 of the Act to limit its application to contraventions of SMP apparatus conditions only. Paragraph 55 of the 2011 Regulations inserts a new section 96A setting out the process for notifying a contravention of a condition other than SMP apparatus condition.
- 3.7 Regulation 3 sets out the transitional provisions by reference to Schedule 3. Paragraph 16 of Schedule 3 states that paragraphs 54 to 63 of Schedule 1 do not apply in relation to a contravention of a condition set under section 45 of the Communications Act 2003 which occurred before 26 May 2011 (and, in relation to a continuing contravention, do not apply in respect of any period of contravention before 26th May 2011).
- 3.8 No changes were made to section 95 (Enforcement notifications for contravention of conditions) and section 96 (Penalties for contravention of conditions) of the Act.
- 3.9 Therefore the process for notifying the contravention of GC24 as set out in the Notification remains as set out in section 94 of the Act (unamended).

⁹ <http://www.legislation.gov.uk/uksi/2011/1210/made>

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:En:PDF>

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0037:01:EN:HTML>

General Condition 24

3.10 Following the consultation 'Protecting Consumers from Mis-selling of Fixed-Line Telecommunications Services', Ofcom published a statement on 18 December 2009 introducing new sales and marketing rules along with rules concerning the use of Cancel Other. These rules were included in the new GC24 which came into force on 18 March 2010 (GC24 is provided in its entirety in Annex 1). GC24 applies to all CPs who sell fixed-line telephone services to Customers.

Cancel Other

3.11 Under GC24, providers are prohibited from using Cancel Other to cancel orders for purposes other than for those reasons expressly specified by GC24. Cancel Other is an industry term for a consumer protection mechanism designed to ensure that Customers are not switched without their express knowledge and/or consent.

3.12 The effect of using Cancel Other is that the Gaining CP's order is cancelled and does not complete. This will mean that the Customer remains with their current CP, the Losing CP.

3.13 GC24.14 requires that:

"The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:

- i) where Slamming has occurred;*
- ii) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");*
- iii) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");*
- iv) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and*
- v) in such circumstances as defined by Ofcom."*

3.14 GC24.15 requires that:

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

3.15 GC24.18 requires that:

"Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider."

The Programme

- 3.16 On 18 March 2010, Ofcom opened the Programme to monitor industry-wide compliance with GC24, including the Cancel Other requirements. Ofcom opens individual investigations and/or takes direct enforcement action under this Programme where required¹².
- 3.17 As noted above, Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched without their express knowledge and/or consent. CPs can however abuse this mechanism by using it for reasons other than as an anti-slamming measure. For example, complaints received by Ofcom's Consumer Contact Team ("CCT") have indicated that CPs have used Cancel Other to block customers switching between CPs or to prevent customers from cancelling their service whilst monies are owed on an account.
- 3.18 Competitive communications markets are more likely to work well for consumers when it is quick and easy to switch between providers. It is however equally important that consumers are protected from inappropriate and unacceptable behaviour by CPs which may undermine confidence in the market as well as causing individual harm. An example of such unacceptable behaviour is the mis-selling of telecommunications services. The term 'mis-selling' covers a range of sales and marketing activities, and includes Slamming, that is where a consumer is simply switched from one CP to another without his knowledge and consent.
- 3.19 Ofcom is committed to reducing instances of mis-selling of telecommunications services as a strategic priority. One key aspect of this priority is preventing abuse of the Cancel Other process, a functionality that allows Losing CPs to cancel orders (during the transfer period) where Slamming has been alleged by a Customer. Cancel Other is an important consumer protection mechanism, but where it is abused by CPs, and used to retain Customers against their wishes, rather than to protect them from Slamming, this gives rise to consumer harm, the result being inconvenience, stress or anxiety for those consumers as well as financial detriment where they may be denied the ability of moving to a cheaper service.
- 3.20 This is also contrary to our policy objectives and aims including, in particular, that Customers should have a good experience of switching.

¹² Details of which are provided at http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01045/

Section 4

The Investigation

Background

- 4.1 In administering the Programme, Ofcom monitors complaints received by the CCT from consumers. In February 2011, the CCT received a complaint about Sensim's use of Cancel Other which alleged that it had been used for reasons other than those permitted by GC24. On the basis of this complaint, and representations from industry stakeholders that alleged similar mis-use of Cancel Other by Sensim, Ofcom decided to conduct an investigation into Sensim's compliance with GC24.
- 4.2 Sensim was incorporated on 17 November 2004 and is a private limited company whose nature of business is telecommunications and business and management consultancy. Its company registration number is 05289856. Information provided to Ofcom suggests that Sensim commenced trading in January 2011.
- 4.3 According to its website,¹³ Sensim offers a range of products and services including fixed and mobile telephony, internet, telephone systems, VoIP and Non-Geographic Numbers.

Information gathering

Section 135 Information Request

- 4.4 As part of the Investigation, on 26 May 2011, Ofcom issued a draft Information Request under section 135 of the Act to Sensim requiring it to provide details of its processes and systems relevant to its use of Cancel Other. The draft was issued via an email sent to [redacted] (Operations Manager) of Sensim.
- 4.5 The draft request was issued to allow Sensim an opportunity to provide any comments it may have on the information requested prior to a finalised version being issued. Comments on the draft were required by 31 May 2011. Sensim was provisionally required to respond to a final Information Request by 14 June 2011.
- 4.6 Ofcom received no comments on the draft and a final Information Request was sent to Sensim on 31 May 2011(see Annex 3).
- 4.7 The purpose of the Information Request was to enable Ofcom to use the information provided to assess Sensim's compliance with the Cancel Other elements of GC24 (namely, GC24.14, GC24.15, GC24.16 and GC24.18). It requested certain specified documents and information relating to Sensim during the Relevant Period, including:
- a) Confirming whether Sensim provided a Fixed-Line Telecommunications Service¹⁴ to Customers;
 - b) The details of the CP that Sensim purchased narrowband and/ or line services from;

¹³ http://www.sensimtelecom.co.uk/products_and_services/

¹⁴ See 5.16.

- c) Full details of Sensim's procedures following receipt of a transfer notice, known as a Losing Received Notification ("LRN")¹⁵;
- d) Examples of letters, or communications in other Durable Medium¹⁶ if applicable, that Sensim sent to Customers following receipt of a LRN;
- e) Examples of call scripts used for making calls to Customers where Sensim phones Customers in addition to sending them a letter following receipt of an LRN;
- f) Full details of any steps that Sensim took:
 - i) to establish that Slamming and/or Failure to Cancel had taken place, before using Cancel Other; and
 - ii) after it received an LRN for a line on which it had previously used Cancel Other;
- g) In instances where Sensim used Cancel Other:
 - i) the method to confirm to the Customer that the transfer order had been cancelled; and
 - ii) examples of any written correspondence used to confirm the cancellation to the Customer;
- h) Copies of all training materials used by Sensim, in relation to the use of Cancel Other. We asked that this include, but was not limited to, copies of any training logs/schedules, manuals, briefings, guidelines or other instructions for staff involved in the use of Cancel Other during the Relevant Period.

Sensim response to the Section 135 Information Request

4.8 Sensim provided a response to the final Information Request on 14 June 2011 (see Annex 4). Its response (the "Response") included:

- a) confirmation that Sensim provided Fixed-Line Telecommunications Services to Customers during the Relevant Period;
- b) examples of correspondence sent to Customers following receipt of a LRN:
 - i. A letter titled, '*We are sorry you are leaving*' confirming that a Customer's telephone line is moving to another provider.

¹⁵ When a customer instructs a gaining CP to place an order to transfer their fixed-line telephone service from one CP to the gaining CP, the losing CP is made aware of the customer's intention to transfer through a notification from the Openreach Service Provider Gateway (the "SPG"). The SPG and the BT Wholesale Gateway is an online ordering tool that enables CPs to place and track their orders. This notification of the customer's intention to transfer is referred to as the LRN.

¹⁶ "Durable Medium" means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

- ii. A letter titled '*We have stopped the transfer for you*' sent where the Gaining CP has failed to cancel the request after being directed by the Customer to do so (Failure to Cancel).
 - iii. A letter titled '*We have not been able to reach you*' sent where Sensim has not been able to contact the Customer to confirm the transfer. It confirms the transfer and includes information on final charges.
 - iv. An additional letter titled, '*We have stopped the transfer for you*' sent where Sensim has not been able to get in contact with the 'specified named contact'. The letter notes, 'We have placed an order to stop the transfer, under "slamming" until your return'. This implies that Cancel Other has been used.
 - v. A letter titled, '*We have stopped the transfer as you have taken on a new service*' sent where Sensim has placed an order to stop a transfer under "new product ordered" in accordance with the Customer's instructions.
- c) An example of a standard leaving script used when Sensim has received a notification that a Customer's telephone services had been applied for by another provider.
- 4.9 No training material was provided. However, the Response noted that staff are directly supervised by Sensim's Operations Director. Upon joining Sensim, staff participate in an induction programme that covers the correct use of Cancel Other.

Section 5

Application of GC24 to Sensim

- 5.1 This section sets out Ofcom’s reasoning and findings with respect to whether Sensim falls within the scope of GC24.

GC24

- 5.2 GC24.1 states that:

“A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers (‘the Customer’) must comply with this General Condition with respect to such Customers”

- 5.3 GC24.2 notes that:

“This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.”

- 5.4 Therefore, in issuing a Notification under section 94 to Sensim in relation to contraventions of GC24, Ofcom must have reasonable grounds for believing that Sensim:

- a) is a Communications Provider (“CP”) as defined in GC24.1;
- b) provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers; and
- c) has had Customers transferring a Fixed-Line Telecommunications Service from Sensim to another CP.

- 5.5 Ofcom notes that Sensim does not dispute that it is subject to GC24.¹⁷ It is clear that it is, in any event, as follows.

Communications Provider

- 5.6 “Communications Provider” is defined in GC24.19 (d), which states:

“‘Communications Provider’ means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act.”

- 5.7 “Electronic Communications Network” (“ECN”) is defined in Part 1 of the General Conditions, again following Section 32 of the Act, and means:

“(a) a transmission system for the conveyance, by use of electrical, magnetic or electro-magnetic energy, of Signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the Signals –

¹⁷ In its Response, Sensim state, ‘It is confirmed that Sensim Telecom Limited is indeed a Provider of Fixed-Line telecommunications to Domestic and Small Business Customers’ (page 1, paragraph 1).

- i. apparatus comprised in the system;*
- ii. apparatus used for the switching or routing of the Signals; and*
- iii. software and stored data.”*

5.8 An “Electronic Communications Service” (“ECS”) is defined in Part 1 of the General Conditions, following Section 32 of the Act, which states:

““Electronic Communications Service” means 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”

5.9 “Signal” is defined in Part 1 of the General Conditions, once more following Section 32 of the Act, and includes –

“(i) anything comprising speech, music, sounds, visual images or communications or data of any description; and

(ii) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus”.

5.10 Sensim purchases wholesale telephone access line and call services from [X] Telecom. Taken together, these two services are referred to as wholesale line rental (“WLR”). Sensim uses those services to enable it to offer retail line rental and call services to customers; that is, it re-sells the services purchased.

5.11 WLR is a facility by which BT Wholesale provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) over the BT network. In the case of Sensim, a wholesale provider, [X], purchases WLR and CPS from BT Wholesale and then provides, or resells, these services to Sensim, who, in turn, provide them directly to (end-user) customers. Sensim noted that it also purchases a small amount of CPS and LLU from TalkTalk Business.

5.12 Therefore, by purchasing WLR, Sensim is able to provide an integrated telephony service comprising calls and access billed on a single monthly bill to compete with BT’s own retail business.

5.13 Sensim, therefore, provides a service which consists of the conveyance of signals (i.e. speech) by way of BT’s ECN. This falls within the definition of ECS contained in Part 1 of the General Conditions.

5.14 In summary, Sensim provides an ECS and therefore it falls within the definition of CP for the purposes of GC24.1.

Fixed line communications services

5.15 In addition to falling within the definition of CP for the purposes of General Condition 24.1, Sensim must also provide “Fixed-Line Telecommunications Services to Domestic and Small Business Customer”.

5.16 “Fixed-Line Telecommunications Services” is defined in GC24.19 which states:

“Fixed-Line Telecommunications Services” means Narrowband call and/or line rental services provided to Domestic and Small Business Customers

5.17 “Narrowband” is defined in GC24.19 which states:

“Narrowband” means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network

5.18 “Cable Network” is defined in GC24.19 which states:

“Cable Network” means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable

5.19 “Public Telephone Network” (“PSTN”) is defined in Part 1 of the General Conditions which states:

“Public Telephone Network” means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data

5.20 The relevant part of the definition of “Publicly Available Telephone Services” (“PATS”) is contained in Part 1 of the General Conditions which states:

“Publicly Available Telephone Services” means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan [...]

5.21 The relevant part of the definition of “Network Termination Point” (“NTP”) is contained in Part 1 of the General Conditions, which states:

“Network Termination Point” means the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network...

5.22 Finally, “Subscriber” is defined in Part 1 of the General Conditions as:

“Subscriber” means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such service.

5.23 Therefore, to fall within the definition of providing Fixed-Line Telecommunications Services, Sensim must provide a Narrowband call and/or line rental service. The definition of Narrowband excludes cable networks and is defined to mean services provided over a PSTN.

5.24 As discussed above, Sensim provides its services over BT’s network via its wholesale provider [X]. This is provided over copper cabling and is therefore not a cable network. However, to fall within the definition of a PSTN, BT’s ECN must be used to provide PATS and must allow the transfer of, at least, speech between NTPs.

5.25 Dealing with the issue of PATS first, the relevant part of the definition of PATS will be satisfied by BT’s ECN as BT’s ECN does allow the making and receiving of all types of telephone calls as well as the making emergency calls. These calls can be made

between the telephones of customers of telephony providers (“Subscribers”), which satisfies the relevant part of the definition of NTP.

- 5.26 Therefore, BT’s ECN falls within the definition of a PSTN and as Sensim provides its call and/or line rental services over this network and not a cable network, it is providing a Narrowband call and/or line rental service to its Customers.
- 5.27 In summary, by providing Narrowband call and/or line rental services, Sensim falls within the definition of providing Fixed-Line Telecommunications Services.

Domestic and Small Business Customer

- 5.28 “Domestic and Small Business Customer” is defined in section 52(6) of the Act and means, in relation to a Communications Provider, a Customer of that Provider who is neither –

“(i) himself a communications provider, nor

(ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise)”

- 5.29 “Customers” is defined in Part 1 of the General Conditions, which states:

““Customers”, in relation to a Communications Provider, means the following (including any of them whose use or potential use of the network or service is for the purposes of, or in connection with, a business):

(a) The persons to whom the network or service is provided in the course of any business carried on as such by the Communications Provider;

(b) The persons to whom the Communications Provider is seeking to secure that the network or service is so provided;

(c) The persons who wish to be so provided with the network or service, or who are likely to seek to become persons to whom the network or service is so provided;”

- 5.30 Sensim provides its services to persons in the course of its business. As a result, its customers fall into the definition of “Customer” for the purpose of Part 1 of the General Conditions.
- 5.31 Therefore Sensim is a CP who provides Fixed-Line Telecommunications Services.
- 5.32 In summary, Sensim is a CP who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers and therefore it falls within the definition of CP for the purposes of GC24.1.

Customer transferring its Fixed-Line Telecommunications Service

- 5.33 Sensim provided correspondence that demonstrates it has had Customers transfer, and/or attempt to transfer, the services it provides to other CPs.
- 5.34 In summary, Sensim has had Customers transferring its Fixed-Line Telecommunications Service from Sensim to another CP and therefore it falls within the scope of application of GC24 for the purposes of GC24.2.

Section 6

Evidence of specific contraventions

- 6.1 This section sets out why Ofcom considers that there are reasonable grounds for believing that Sensim has contravened the Cancel Other provisions of GC24 (specifically GC24.14, GC24.15 and GC24.18).
- 6.2 Ofcom’s findings are based on evidence obtained from information provided by Sensim in its Response. As set out in Section 5, Ofcom considers that Sensim:
- a) is a Communications Provider (as defined in GC24.1);
 - b) provides Fixed-Line Telecommunication Services; and
 - c) has had Customers transferring Fixed-Line Telecommunications Service from Sensim to another CP.
- 6.3 The following sections set out the specific elements of each of GC24.15, GC24.14, and GC24.18 and the evidence that supports the finding of contraventions of them during the Relevant Period.

Contraventions of GC24.15

- 6.4 GC 24.15 requires that:

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

Evidence obtained from Sensim

- 6.5 In the covering letter to the Response, Sensim described the process it undertakes after it has received a LRN for a line on which it has previously used Cancel Other as follows:

*‘(ii) The line will be released to the new provider without delay always subject to establishing that this is the express instruction of the Customer the accuracy of the same being confirmed by telephone call and letter taking care to ensure that only the customer **or the specific named contact** rather than some unidentified third party provides the instruction.’*

- 6.6 In addition, Sensim provided in its Response examples of correspondence sent to Customers following the receipt of an LRN (see 4.8(b)). The letters noted in 4.8(b)(iv) and 4.8(b)(v) raised specific concerns and these are addressed in turn below.
- 6.7 The letter titled ‘*We have stopped the transfer for you*’ (described at 4.8(b)(iv)) notes:

“We have spoken to a member of your staff, who informed us that you are away from business at the present time.

An order had been placed to move your telephone service to another provider and we are of the opinion that you are potentially the victim of what is known as “slamming”, as we do not see how you can have agreed to this order as you are away at present.

We have placed an order to stop the transfer, under “slamming” until your return.

If you return before we contact you and it is in fact your wish to leave our services simply ask your chosen provider to re-apply for the lines, and then please contact us by phone to inform us of your decision.

It is hoped that this does not cause you too much inconvenience as we would never stop a true order, therefore your assistance in this matter is much appreciated.”

- 6.8 Accordingly, Sensim’s process for using Cancel Other in the above scenario was as follows:
- i) on receipt of an LRN, Sensim will attempt to contact the Customer or the specific named contact representing the Customer by letter and phone to confirm whether their intention is to transfer their Fixed-Line Telecommunications Service away from Sensim; and
 - ii) where Sensim is unable to contact the Customer or the specific named contact representing the Customer by phone, Sensim will contact the Customer in writing to indicate that the order has been cancelled.
- 6.9 The purpose of the provisions in GC24 relating to Cancel Other and specifically GC24.15 is to prevent the misuse of the Cancel Other process by Losing CPs. This occurs where Cancel Other is used primarily to prevent customers from moving to another provider (switching) rather than to protect from Slamming and/or Failure to Cancel.
- 6.10 By requiring specific named account holders to confirm that the order should proceed, this process presumes that Slamming and/or Failure has taken place unless the account holder representing the Customer confirmed otherwise and rebutted the presumption. This equates to frustrating the switching process as transfers should be allowed to proceed unless the Customer informs Sensim that there has been a Failure to Cancel or Slamming has occurred.
- 6.11 The Guidance is clear about when Cancel Other is to be used. A6.44 states that Cancel Other should not be used as a result of, ‘...internal miscommunications [...] where a request for service has been or may have been made by a person other than the named on the bill but who may have been identified themselves as an authorised decision maker.’ The Guidance also notes that the account holder may not be the only authorised decision maker in a household or business where decisions about services are often made jointly. In this regard, where a named account holder disagrees with a decision to transfer a service, then it is up to those individuals and not the Losing CP to resolve.
- 6.12 The effect of the process described in the Response ultimately frustrates the Gaining CP led process by ensuring that contact between a Customer and the Losing CP was a necessary precursor to the transfer of a Fixed-Line Telecommunication Service.

- 6.13 Moreover the letter titled, '*We have stopped the transfer as you have taken on a new service*, (described at 4.8(b)(v)) notes:

"We have placed an order to stop the transfer, under "new product ordered", strictly in accordance with your firm instructions."

- 6.14 This letter was sent after receipt of a LRN. This letter suggests that the Customer has changed its mind about switching to a new provider and has taken out a new service with Sensim.
- 6.15 The Guidance is again clear in this regard. A6.40 states that, '**The Losing Communications Provider is not permitted to use Cancel Other where a Customer has placed the order, but wants to change their mind**, e.g. because the information he has received from the service provider does not seem consistent with what they were told at the time of the sale, or because they felt pressured by the sales agent into placing an order (emphasis added)'. The Guidance goes on to note that in such cases the Losing CP should direct the Customer back to the Gaining CP to cancel the order.

Conclusion

- 6.16 For the reasons described in sections 6.5 to 6.15, Ofcom considers that Sensim did not take reasonable steps to establish Slamming and/or Failure to Cancel actually took place prior to using Cancel Other in the Relevant Period and there are reasonable grounds to believe Sensim has contravened GC24.15.

Contraventions of GC24.14

- 6.17 GC24.14 requires that, in relation to the use of Cancel Other:

"The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:

- i) where Slamming has occurred;*
- ii) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");*
- iii) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");*
- iv) for other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and*
- v) in such circumstances as defined by Ofcom."*

Evidence obtained from Sensim

- 6.18 In sections 6.5 to 6.15, Ofcom has set out its reasonable grounds for believing that Sensim had not taken reasonable steps to establish that Slamming and/or Failure to Cancel had actually occurred before using Cancel Other.
- 6.19 The most common permitted uses of Cancel Other are in the cases of Slamming and Failure to Cancel. Cancel Other can also be applied to Line Cease but this is only in

a narrow set of circumstances as a necessary step when a Losing CP has already placed an order to cease a line prior to receipt of the LRN.¹⁸ Ofcom has not approved or set out any other circumstances where Cancel Other is permissible.

- 6.20 By not taking reasonable steps to ensure that Slamming and/or Failure to Cancel had actually taken place prior to using Cancel Other, Ofcom infers that Sensim is likely to have used Cancel Other in circumstances other than Slamming and/or Failure to Cancel.

Conclusion

- 6.21 For the reasons described in sections 6.18 to 6.20, Ofcom considers that by not taking reasonable steps to ensure that Slamming and/or Failure to Cancel had taken place (in circumstances when other aspects of GC24.14 do not apply), by inference, there are reasonable grounds to believe that Sensim used Cancel Other in circumstances other than those permitted in GC24.14 during the Relevant Period and has therefore contravened GC24.14.

Contraventions of GC24.18

- 6.22 GC24.18 requires that:

“Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider.”

- 6.23 Under GC 24.7 (Post-sales information), the Losing CP must communicate with the Customer as follows:

“Where the Customer enters into a contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter in accordance with the industry agreed process, stating that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:

- (i) the date of the letter*
- (ii) the Calling Line Identification of all Electronic Communications Services which are affected;*
- (iii) the list of services affected/ unaffected;*
- (iv) the proposed switchover date;*
- (v) relevant contact details; and*
- (vi) the right to terminate the contract, the means by which the right to terminate from the point of sale to the completion of the Transfer*

¹⁸ See second bullet point of A2.6.

Period can be exercised and the date by which the right to terminate must be exercised.”

- 6.24 This letter as described in GC24.7 is intended to ensure the Customer is fully aware of the forthcoming transfer of their fixed-line telephone service, but importantly GC24.18 requires that the letter must be restricted to neutral/factual information and must not contain any ‘save’ or marketing content.

Evidence obtained from Sensim

- 6.25 In its Response, Sensim provided a letter titled, ‘*We are sorry you are leaving*’ sent to Customers moving to another provider. This letter states:

“We would like to know how to improve our service for the future, so if possible please contact us to give us some feedback as to what we could have done better whilst you were a customer”.

- 6.26 Ofcom considers that whilst there is justification for a Customer who has not agreed a transfer to contact Sensim, including in the letter the line, ‘... *please contact us to give us some feedback as to what we could have done better whilst you were a customer*’, is considered by Ofcom as going beyond what is acceptable in the mandatory letter, as required under GC24.7.
- 6.27 Ofcom has reasonable grounds to believe that this letter is sent upon receipt of an LRN but before a transfer is completed. The letter includes the lines, ‘*We will now transfer from Sensim Telecom on the _____, and we will no longer be your service provider from that date*’ and ‘*In accordance with your Service Agreement we will be charging you a [x] end of contract administration charge to cover all the charges of your lines leaving which sum is strictly set in accordance with Ofcom guidance.*’ From the inclusion of these two sentences, and the title of the letter, Ofcom has reasonable grounds to believe that this letter is sent once a LRN has been received by Sensim, but prior to a transfer being completed. On this basis, the offer to contact Sensim and provide feedback is in contravention of GC24.18.

Conclusion

- 6.28 For the reasons described in sections 6.25 to 6.27, Ofcom has reasonable grounds to believe that Sensim made marketing statements or representations in its communications which may have induced a Customer to terminate their contract with the Gaining CP and/or remain in a contract with the Losing CP during the Relevant Period and by doing so that Sensim has therefore contravened GC24.18.

Section 7

Conclusions and action required by Sensim

Contraventions of General Condition 24

- 7.1 On the basis of the evidence and reasoning contained in the Explanatory Statement, Ofcom hereby determines that there are reasonable grounds for believing that during the Relevant Period, Sensim has contravened GC24.
- 7.2 Specifically, Ofcom believes that Sensim has contravened GC 24 during the Relevant Period by:
- i) failing to take reasonable steps to establish that Slamming and/or Failure to Cancel had actually taken place as required by GC24.15 before using Cancel Other in cases of Slamming and/or Failure to Cancel;
 - ii) using Cancel Other for reasons other than those specified as permissible in GC24.14; and
 - iii) where Sensim was the Losing CP, attempting to induce a Customer to terminate their contract with the Gaining CP and/or remain in a contract with Sensim, through use of marketing statements or representations, contrary to GC24.18.

Action required by Sensim

- 7.3 Sensim has until 5.00pm on **14 October 2011** (the “Deadline”):
- i) to comply with the requirements of GC24 as set out below; and
 - ii) to remedy the consequences of the contraventions of GC24 as set out below.
- 7.4 Ofcom expects that the steps Sensim takes to comply with the requirements of GC24 may include, but are not limited to:
- i) ensuring that when Cancel Other is used in respect of Slamming and/or Failure to Cancel, reasonable steps are taken to establish that Slamming and/or Failure to Cancel has actually taken place. Ofcom would expect Sensim to retain auditable records of the steps it has taken, and the evidence it has collected, prior to using Cancel Other, to satisfy themselves that Slamming and/or Failure to Cancel has actually occurred;
 - ii) ensuring that Cancel Other is only used in the permitted specified circumstances in GC24.14. Sensim should refer to guidance published with GC24, and in particular paragraphs A6.37-44 for assistance in how to achieve this requirement (paragraphs A2.1-8 in Annex 2); and
 - iii) ensuring that when communicating with the Customer in order to comply with GC24, Sensim does not make any marketing statements or representations that may induce the Customer to terminate their contract with the Gaining CP and/or remain in a contract with the Losing CP. This would include, but is not limited to,

amending or removing sections from standard and specific correspondence currently sent by Sensim to Customers attempting to cancel a service with Sensim (see paragraph 6.25).

- 7.5 The steps Sensim takes to remedy any consequences arising from its contraventions may include, but are not limited to allowing, Customers to transfer to the CP of their choice, without charge (subject to contractual provisions and charges).
- 7.6 In the alternative, Sensim may, prior to the Deadline, make representations to Ofcom about how it proposes to remedy fully the consequences arising from its contravention of GC24 by a specified date to be agreed with Ofcom. Ofcom is not bound to accept any proposal by Sensim as complying with the requirement to remedy fully any consequences of its contravention of GC24 by the Deadline but will give any representation made due consideration.

Representations in response to this Notification

- 7.7 Sensim has until the Deadline to make representations to Ofcom about the matters set out in the Notification and this accompanying Explanatory Statement in relation to GC24. These representations should include an explanation of how Sensim is complying with GC24 and has remedied, or (to the extent steps remain to be taken before the Deadline) proposes to remedy, the consequences of the notified contraventions.

Failure to comply

- 7.8 If, by the Deadline, Sensim does not comply with GC24 and/or fails to remedy fully the consequences of its breach of GC24 as set out in the Notification and explained in the body of this document, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a penalty, up to a maximum of 10 per cent of relevant turnover on Sensim under section 96 of the Act.

Annex 1

General Condition 24 on Sales and Marketing of Fixed-Line Telephony Services

Scope

- 24.1 A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers ('the Customer') must comply with this General Condition with respect to such Customers.
- 24.2 This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.

Mis-selling prohibition

- 24.3 When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
 - (b) engage in aggressive conduct;
 - (c) contact the Customer in an inappropriate manner; or
 - (d) engage in Slamming.

Responsibility

- 24.4 Where the Communications Provider engages representatives, such as any sales agency, to act on its behalf in the sale and marketing of Fixed-Line Telecommunications Services, the Communications Provider shall procure that such representatives comply with the requirements of this General Condition.

Publication of relevant obligations

- 24.5 The Communications Provider must:
- a) publish a copy of this General Condition, or a link to a copy of this General Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and
 - b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.

Information at Point of sale

- 24.6 The Gaining Communications Provider must take all reasonable steps to ensure that before entering into a contract for a Fixed-Line Telecommunications Service the Customer who is transferring the line:
- a) is authorised to do so;

- b) intends to enter into the contract; and
- c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
 - (i) the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;
 - (ii) a description of the Fixed-Line Telecommunications Service requested; the key charges, including minimum contract charges, and any early termination charges, if applicable; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.

Post-sales information

- 24.7 Where the Customer enters into a contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, in accordance with the industry-agreed process, stating that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:
- (i) the date of the letter;
 - (ii) the Calling Line Identification of all Electronic Communications Services which are affected;
 - (iii) the list of services affected/unaffected;
 - (iv) the proposed switchover date;
 - (v) relevant contact details; and
 - (vi) the right to terminate the contract, the means by which the right to terminate from the point of sale to the completion of the Transfer Period can be exercised and the date by which the right to terminate must be exercised.
- 24.8 The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

Customer's termination rights

- 24.9 When the Customer enters into a contract to transfer a Fixed Line Telecommunications Service the Gaining Communications Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Communications Provider.
- 24.10 The Gaining Communications Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to General Condition 24.9 without unreasonable effort. These procedures must include the

ability to contact the Gaining Communications Provider to terminate the contract by any of the following contact methods:

- (i) telephone;
- (ii) e-mail; and
- (iii) post.

Records retention

24.11 The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the Contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

Training

24.12 The Communications Provider must ensure that all its staff or any representatives of any sales agency engaged by it, involved in direct contact with Customers for the purpose of sales and marketing activity and/or Cancel Other are appropriately trained to comply with this General Condition.

Monitoring

24.13 The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and take appropriate steps to prevent the recurrence of any problem(s) identified.

Cancel Other process

24.14 The Losing Communications Provider shall only be permitted to use Cancel Other in the following circumstances:

- (a) where Slamming has occurred;
- (b) at the Customer's request, where the Gaining Communications Provider has failed to cancel the request 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 Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and
- (e) in such other circumstances as defined by Ofcom.

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

- 24.16 After using Cancel Other, the Losing Communications Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the Customer is deceased.
- 24.17 The Losing Communications Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with GC24.19(m)(i) to (iv), as agreed by the industry, and approved by Ofcom.
- 24.18 Where the Losing Communications Provider communicates with the Customer in order to comply with this General Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Communications Provider and/or remain in a contract with the Losing Communications Provider.

Definitions

24.19 For the purpose of this Condition:

- a) **“Cable Network”** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- b) **“Cancel Other”** means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the Transfer Period) placed by the Gaining Communications Provider which can only be used in the circumstances set out in 24.14;
- c) **“Communications Provider”** means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act;
- d) **“CPS”** means Carrier Pre-Selection, 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;
- e) **“Domestic and Small Business Customer”** has the meaning set out in section 52 (6) of the Act;
- f) **“Durable Medium”** means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- g) **“Failure to Cancel”** means where the Gaining Communications Provider has not cancelled a transfer, after a request from the Customer during the Transfer Period;
- h) **“Fixed-Line Telecommunications Services”** means Narrowband call and/or line rental services provided to Domestic and Small Business Customer;
- i) **“Gaining Communications Provider”** means the Communications Provider to whom the Customer is transferring;

- j) “**LLU**” means Local Loop Unbundling, the process by which a dominant provider’s local loops are physically disconnected from its network and connected to a competing provider’s network.
- k) “**Losing Communications Provider**” means the Communications Provider from whom the Customer is transferring;
- l) “**Narrowband**” means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;
- m) “**Slamming**” means where a request for CPS, WLR and/or LLU has been made without the Customer’s express knowledge and/or consent; that is in the following circumstances:
 - (i) where the Customer has never been contacted by the Gaining Communications Provider;
 - (ii) where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
 - (iii) where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request for a different product or service which the Customer has not agreed to purchase; or
 - (iv) where the Customer has agreed to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider.
- n) “**Transfer Period**” means the period of 10 Working Days from before a Customer’s order can be activated;
- o) “**WLR**” means Wholesale Line Rental, a facility which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line; and
- p) “**Working Days**” means the hours between 09.00 – 17.00 on Monday to Friday with the exception of bank holidays.

Annex 2

Guidelines in respect of General Condition 24 (Cancel Other provisions – A6.37-44 in original Guidance)¹⁹

Cancel Other

- A2.1 Cancel Other is a consumer protection mechanism designed to ensure that Customers are not switched – transferred between Communications Providers – without their express knowledge and/or consent. Therefore, Cancel Other should only be used in certain circumstances, in particular, where the Customer believes they are a victim of slamming.
- A2.2 To ensure compliance with GC24 Ofcom expects all Losing Communications Providers to apply Cancel Other only in the circumstances set out in GC24.14.
- A2.3 Ofcom considers that the primary purpose of Cancel Other is to protect Customers from Slamming, and the Losing Communications Provider must take reasonable steps to ensure that Slamming has actually taken place before cancelling the order.
- A2.4 The Losing Communications Provider is not permitted to use Cancel Other where a Customer has placed the order, but wants to change their mind, for e.g. because the information he has received from the service provider does not seem consistent with what they were told at the time of the sale, or because they felt pressured by the sales agent into placing an order. In such cases, the Losing Communications Provider should direct the Customer back to the Gaining Communications Provider to cancel the order.
- A2.5 In respect of 'Passing off', Ofcom considers that this constitutes Slamming because the Customer has no knowledge of, and has not consented to, a transfer to the Gaining Communications Provider which placed the order. In this case, they are likely to believe, for e.g., that they have ordered a new service or payment method from the Losing Communications Provider. Ofcom considers that this is qualitatively different from other types of mis-selling where the service provider correctly identifies itself, but gives misleading information about the products or services that it is providing.
- A2.6 Other permitted instances of Cancel Other by the Losing Communications Provider include the following:
- in cases of Failure to Cancel, i.e. where a Gaining Communications Provider has failed to cancel a transfer after the Customer has requested this. While the Gaining Communications Provider is required to cancel a transfer if the Customer asks it to do so during the transfer period, Ofcom considers that Customers also need a "safety net" mechanism that enables them to cancel a transfer when a Gaining Communications Provider has failed to do so.

Losing Communications Providers will therefore be permitted to use Cancel Other where a Gaining Communications Provider has failed to cancel a transfer

¹⁹ See <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/narrowband/statement.pdf> for full 'Guidelines to General Condition 24: Sales and Marketing of Fixed-Line Telecommunications Services'

when the Customer has requested this. However, Ofcom considers that this safety net should be implemented in such a way that it will only be used where a Gaining Communications Provider fails to cancel a transfer, and not simply because a Customer has contacted the Losing Communications Provider for peace of mind and asked it to ensure that the transfer has been cancelled.

Before it uses Cancel Other in cases of Failure to Cancel, the Losing Communications Provider must, therefore, take reasonable steps to ensure that Failure to Cancel has, in fact, taken place. Ofcom considers that the Losing Communications Provider should only use Cancel Other if the Customer would otherwise be transferred to the Gaining Communications Provider against their wishes. In practice, where the Losing Communications Provider submits a Cancel Other in response to a Customer's allegation that the Gaining Communications Provider has failed to cancel the transfer, this Cancel Other will not be actioned unless no instruction to cancel has been received from the Gaining Communications Provider by day 9 of the Transfer Period (or day 8 for WLR orders). If the Gaining Communications Provider submits a cancellation before day 9 (or day 8 for WLR orders), this cancellation order will take precedence and no Cancel Other will be recorded.

- In cases of Line Cease and other cases not related to slamming or failure to cancel. Unlike the category discussed above (slamming) the Losing Communications Provider's use of Cancel Other in cases of Line Cease does not follow a conversation with a Customer about an order. When the Losing Communications Provider places an order to cease a line, a consequence of this is that any pending orders relating to that line are cancelled automatically. Such cancellations are recorded as Cancel Other.

Ofcom considers that the Losing Communications Provider's ability to use Cancel Other where the line is going to be, or has been, ceased is a necessary administrative mechanism.

A2.7 To give Customers certainty and transparency, Ofcom proposes that Losing Communications Providers should be required to confirm the cancellation of the order wherever it uses Cancel Other, unless this is not possible.

A2.8 Cancel Other should not be used by the Losing Communications Provider in the following circumstances:

- to frustrate the transfer process, particularly in situations where, for example, the Customer has not yet paid their bill, the notice period has not been served or where disconnection or termination of charges apply. These charges should be included in the final bill, and settled in accordance with standard payment terms;
- in cases of internal miscommunication which is where a request for service has been or may have been made by a person other than the person named on the bill but who may have identified themselves as an authorised decision maker.

In many cases, where a Customer contacts a Losing Communications Provider following internal Customer miscommunication, it will appear to the Customer that slamming has occurred. However, Ofcom considers that this is not an appropriate use of Cancel Other given that the named account holder may not be the only authorised decision maker in a household or business, where decisions about fixed-line telecoms services are often made jointly. In such circumstances, Ofcom considers that where the named account holder disagrees with this decision, it is

up to those individuals, and not the Losing Communications Provider to resolve. Similarly, in the case of businesses, Ofcom considers that if an individual takes a decision they are not authorised to make, this is a matter for the organisation concerned, and should not be for the Losing Communications Provider to resolve. Where internal Customer miscommunication has occurred, the Customer can cancel the transfer by contacting the service provider within the Transfer Period, if the household or organisation has decided it does not want it.

Accordingly, Ofcom believes that it is therefore necessary for the Losing Communications Provider to investigate the possibility that such apparent slams are, in fact, the result of internal Customer miscommunication, by asking questions, for example whether anyone else in the household or organisation or business could have placed the order. Losing Communications Providers should therefore ensure that there are adequate procedures in place which enable individuals other than the named account holder to make decisions on an account, subject to a verification process which requires those individuals to provide information that would only be available to an authorised decision maker.

Annex 3

Information requested from Sensim

A3.1 A Communications Provider (“CP”) who provides a Fixed-Line Telecommunications Service²⁰, to Domestic and Small Business Customers²¹ (“Customers”) must comply with General Condition 24²² with respect to Customers who are transferring a Fixed-Line Telecommunications Service between CPs.

Please confirm whether Sensim currently provides such services to such Customers. If you consider Sensim does not provide such services to such Customers please explain why.

A3.2 Where Sensim is a provider of Fixed-Line Telecommunications Services to Customers, provide the details of the Communications Provider from whom you purchase any of the following narrowband call and/or line services: CPS, WLR and LLU (where relevant).

A3.3 Where Sensim is a provider of Fixed-Line Telecommunications Service to Customers, please provide the information specified below. Where the material or processes have changed since 18 March 2010, please provide all versions of the materials or processes highlighting for each answer the period over which it was used:

- a) full details of Sensim’ procedures following receipt of a transfer notice known as a Losing Received Notification²³ (“LRN”).
- b) an example of letters, or communications in other Durable Medium²⁴ if applicable, that Sensim has sent to Customers following receipt of an LRN.
- c) an example of call scripts used for making calls to Customers where Sensim calls Customers in addition to sending them a letter.
- d) full details of the steps that Sensim takes:
 - i) to establish that Slamming²⁵ or Failure to Cancel²⁶ has taken place, before using Cancel Other²⁷.

²⁰ Narrowband call and/or line rental services.

²¹ Section 52 (6) of the Communications Act 2003 states:

‘In this section “domestic and small business customer,” in relation to a public communications provider, means a customer of that provider who is neither —

(a) himself a communications provider; nor

(b) a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers).’

²² The following is a link to General Condition 24 and the accompanying guidance which provides further details: <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/narrowband/statement.pdf>. Relevant definitions of terms contained within this information request can be found at this link under GC24.19.

²³ When a customer instructs a CP (i.e. the “gaining provider”) to place an order to transfer their fixed-line telephone service from one CP to the gaining provider, the losing provider is made aware of the customer’s intention to transfer through a notification from the Openreach Service Provider Gateway (the “SPG”). The SPG and the BT Wholesale Gateway is an online ordering tool that enables CPs to place and track their orders. This notification of the customer’s intention to transfer is referred to as Losing Receipt Notification (“LRN”).

²⁴ “Durable Medium” means any instrument which enables the Customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

²⁵ “Slamming” is an extreme form of mis-selling, where customers are simply switched from one company to another without their express knowledge or consent.

- ii) after it has received an LRN for a line on which it has previously used Cancel Other.
- e) In instances where Sensim uses Cancel Other:
- iii) the method to confirm to the Customer that the transfer order has been cancelled.
 - iv) any written correspondence used to confirm the cancellation to the Customer.
- f) copies of all training material used by Sensim, in relation to the use of Cancel Other. This should include, but is not limited to, copies of any training logs/schedules, manuals, briefings, guidelines or other instructions for staff involved in the use of Cancel Other.

²⁶ “Failure to Cancel” is where the gaining provider has not cancelled a CP’s transfer, after a request from the Customer during the transfer period.

²⁷ “Cancel Other” is a function that enables LCPs to cancel a request for transfer but only in certain circumstances, e.g. the customer is a victim of slamming. Please see further information on the use of “Cancel Other” by following the link at Footnote 1 above.

Annex 4

Sensim response to information requested

The content of Annex 4 has been redacted for confidentiality purposes.