



Review of the Metering and Billing Direction

Consultation

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Section 1

Summary

- 1.1 A key feature of electronic communications services is that consumers are not readily able to verify that their bills accurately reflect their usage of voice and data services. This is in part because of the large number of communications services and tariffs and also, unlike for the supply of gas and electricity, there is no meter for consumers to monitor their usage so, although consumers may be able to identify major errors, to a large extent the detail and accuracy of bills is taken on trust.
- 1.2 It is important that such trust is justified, consumers are not overcharged and consumer confidence in the accuracy of bills is maintained. As a consequence, Ofcom requires all providers of electronic communication services to provide accurate bills, under General Condition 11.1.
- 1.3 General Condition 11.3 imposes additional requirements on communications providers (“CPs”) with a turnover in the provision of Publicly Available Telephone Services (PATS) (i.e. fixed and mobile voice services) of over £40 million per year.
- 1.4 Under General Condition 11.4, such CPs are required to obtain approval of their Total Metering and Billing Systems (TMBS) for PATS services from third-party assessors against the requirements of a Direction set by Ofcom (“the Direction”). The third party assessors – called Approval Bodies (“ABs”) – are appointed by Ofcom.
- 1.5 The Direction is essentially a technical standard intended to ensure that CPs’ billing systems deliver accurate bills. It includes monitoring and reporting requirements for CPs and it also sets maximum error rates (‘tolerance limits’) for those systems. The current Direction was adopted by Ofcom in 2008. Fixed and Mobile Voice Services are required to meet mandatory compliance requirements in the Direction whilst data connections (Broadband) and ‘Voice over Internet Protocol’ (VoIP), are subject to voluntary provisions.
- 1.6 The purpose of this consultation is to review the Direction and consider whether any changes are necessary. We want to ensure that the Direction’s scope and requirements remain appropriate given changes in the market in recent years including the growth in data services.
- 1.7 We also want to consider the impact of the increased availability and take-up of inclusive tariff packages (e.g. where a data download allowance or a call allowance is provided in exchange for a fixed fee and if a consumer does not exceed their allowance for a particular service, they will not incur any additional costs). It may be the case, in these circumstances, that the accuracy requirements set by the Direction may be of less relevance in providing protection for these consumers. That said, it is still important that use of inclusive allowances is accurately monitored and that, when consumers do exceed their allowance, the charges are accurately calculated.
- 1.8 The final reason for the review is that ABs and CPs have reported difficulties in achieving compliance with the Direction in respect of services for large businesses and of wholesale services which CPs provide to each other.
- 1.9 In general, we consider that the Direction is working well and therefore propose that the existing requirements remain largely unchanged. The proposals that we are

considering are targeted changes in response to market developments and feedback from CPs and ABs.

1.10 In summary, we propose that:

- The requirements in respect of fixed and mobile voice services for households and small and medium-sized businesses should remain unchanged.
- Fixed and mobile data services should remain subject to voluntary provisions. However, the provisions should be reviewed by ABs and CPs and updated to ensure that they remain relevant and effective. We will also explore ways to encourage greater adoption of these voluntary provisions.
- The accuracy and tolerance limits should be removed for services to large business consumers with a telecoms spend in excess of £50k per year. The evidence we have from CPs and ABs suggests compliance with these limits is not achievable given the volume of traffic for large businesses. We welcome views and further evidence, particularly from large business consumers, on this proposal.
- CPs and ABs have indicated that the accuracy and tolerance levels for wholesale services are not achievable. However, as the rest of GC11. does not apply to wholesale services and CPs are likely to have an incentive and ability to monitor bills from wholesale providers, we consider it appropriate to remove wholesale services from the Direction rather than simply remove the accuracy and tolerance levels.

We are seeking views on these proposals by 25 April 2013.

Section 2

Introduction

Ofcom's role in protecting consumers

- 2.1 Ofcom is the regulator for the communications sector. Under section 3(1) of the Communications Act 2003 (the Act), Ofcom's principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.2 Section 3(3) of the Act sets out that, in performing their duties under section 3(1), Ofcom must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to any other principles appearing to us to represent the best regulatory practice. We must also, where relevant, have regard in performing those duties to matters including the desirability of promoting competition in relevant markets (section 3(4)(b)).
- 2.3 Section 3(5) of the Act meanwhile says that, in performing our duty of furthering the interests of consumers, Ofcom must have regard in particular to the interests of those consumers in respect of choice, price, quality of service and value for money.

General Conditions

- 2.4 Ofcom has the power under section 45 of the Act to impose various types of conditions on Communications Providers. These include General Conditions ("GCs") which apply to all providers, although not every GC is relevant to every provider or to every type of consumer or service provided. A GC is a condition authorised or required by one or more of sections 51, 52, 57, 58 or 64 of the Act. In particular, under section 51(a) Ofcom may set conditions making such provisions as Ofcom considers appropriate for protecting the interests of the end-users of public electronic communications services.
- 2.5 In order to create or modify a GC, Ofcom must, by virtue of section 47 of the Act, be satisfied that such a condition or modification is:
 - objectively justified,¹
 - not unduly discriminatory,
 - proportionate, and
 - transparent in relation to what it is intended to achieve.

The need for Metering and Billing Provisions

- 2.6 GC11 was adopted under the framework outlined above in order to regulate the accuracy of bills. It was considered necessary because a feature of electronic communications services is that consumers are not generally readily able to quantify

¹ This is an express requirement where we modify a GC. It is also relevant where we set a GC, given the need for the condition to meet a proportionality requirement.

their service usage or to verify their bills. Unlike in gas and electricity, for example, there is no domestic meter to enable consumers to monitor their volume of usage. In addition the number of services used and the complexity of billing can make it extremely difficult for a consumer to check that their bill is correct.

- 2.7 Therefore, although consumers may be able to identify major errors, to a large extent many have to take the bills they receive on trust. Ofcom has taken the view that it is important for us to ensure that such trust is justified, that consumers are not overcharged and that consumer confidence in the accuracy of bills is maintained.
- 2.8 As a result, Ofcom adopted GC11 which provides an important protection for consumers who, in the absence of Ofcom's powers to take enforcement action under GC11, would be forced to rely on bringing multiple contractual claims in the event of inaccurate bills.
- 2.9 GC11 imposes a requirement for billing accuracy on all providers of public electronic communications services. GC11.1 states:
- “The Communications Provider shall not render any Bill to an End-User in respect of the provision of any Public Electronic Communications Services unless every amount stated in that Bill represents and does not exceed the true extent of any such service actually provided to the End-User in question”.
- 2.10 GC11.3 imposes additional requirements on communications providers (“CPs”) with a turnover in the provision of Publicly Available Telephone Services (PATS) (i.e. fixed and mobile voice services) of over £40 million per year. Under GC11.4, such CPs are required to obtain approval of their Total Metering and Billing Systems (TMBS) for PATS services from third-party assessors against the requirements of the Ofcom Metering and Billing Direction.
- 2.11 The third party assessors, Approval Bodies (ABs), are appointed by Ofcom. Currently there are three ABs appointed - the British Approval Board for Telecommunications (BABT), the British Standards Institution (BSI) and Enigma QPM. The ABs charge the CPs for initial approval and the ongoing monitoring they carry out.

Ofcom Metering and Billing Direction

- 2.12 Ofcom has power under section 49 of the Act to give directions that affect the operation of GCs. Section 49 says that, where a condition set under section 45 (e.g. a General Condition) has effect by reference to a direction from OFCOM, Ofcom may only give, modify or withdraw the direction where we are satisfied that similar tests to those applicable under section 47 (see above) are met.
- 2.13 Ofcom adopted the Metering and Billing Direction on 15 July 2008 under GC11. The Direction is in essence a technical standard intended to ensure that compliant systems will deliver accurate bills. Amongst other things it requires the Communications Provider (CP) to:

- Produce, and agree with the AB, a High Level Description² of its TMBS, including all business and technical processes that can impact upon the system and those of related third parties or sub-contractors;
- assess risks to the TMBS's accuracy and document mitigation actions;
- produce and agree with the AB a Measurement Strategy³ setting out how risks are to be monitored; and
- have processes in place for receiving, identifying, investigating and dealing with incorrect charges on consumers' bills.

2.14 It also sets out:

- the error-rate that is allowable (e.g. 0.002% or £1 in every £50,000 of calls or other charges billed);
- a maximum amount ('threshold') of £600 a month in respect of overcharging allowed by CPs whose turnover is less than £360m a year;
- the procedure to be followed by CPs in the event of failures in the performance of their metering and billing system; and
- the assessment process for initial and ongoing approval.

2.15 The mandatory provisions of the Direction (i.e. those required under GC 11.3) apply to PATS services (i.e. fixed and mobile voice services). The Direction also contains voluntary provisions on data services and Voice over Internet Protocol ('VoIP') services.

This consultation

2.16 The purpose of this consultation is to review the Direction. Ofcom last reviewed the main provisions of the Direction in 2007/8. Since then there have been several changes in the communications market, notably with the growth in the use of fixed broadband services and mobile data services. We are also aware that the increased availability and take-up of inclusive call and data packages may have reduced the risk of inaccurate billing and is consequently a relevant factor in assessing the justifications for changing the scope of the Direction.

2.17 In addition we have received feedback from the ABs and CPs that some of the Direction's requirements were proving impractical to meet, in particular in respect of voice services provided to large business consumers and wholesale voice services provided by CPs to other CPs, namely:

- the extent Large businesses and wholesale need the protection of the Direction in the face of bespoke contractual arrangements and flexible service delivery

² A High Level Description is defined in section A3.4.1 of the Direction as 'a documented explanation of the TMBS and the associated risks to completeness and accuracy'.

<http://stakeholders.ofcom.org.uk/binaries/telecoms/metering/ofcommb.pdf>

³ A Measurement Strategy is defined in section A3.4.2 of the Direction as a statement of how risks are to be monitored and where the occurrence of the risk is measured for reporting on the TMBS performance.

- the practicality of adhering to the 1:50,000 error rates and £600 allowable tolerance threshold set out in Annex B of the Direction by CPs
- 2.18 CPs argued that the nature of billing to large businesses and the bespoke manner in which they are negotiated is more likely to see billing issues addressed through contractual arrangements and that there was little benefit to large businesses in having the protection Direction and that they possessed stronger buying power than residential consumers
- 2.19 ABs and CPs providing wholesale services report that the accuracy limit and allowable tolerances are unworkable for wholesale services as the volume of traffic means that they are easily triggered and the requirements cannot be practically met. CPs and ABs are therefore working round the problem to reduce the level of breaches rather than try and achieve compliance with the current requirements, which appears to place an undue burden on the parties involved.
- 2.20 CPs have also argued wholesale and large business consumers are more able to check and challenge the accuracy of their bills effectively than residential and small business consumers and therefore do not need the specific protections that the Direction provides over and above the general protections of GC11.1.
- 2.21 We are not proposing to review the scope of GC11.1 as there is no evidence that the general requirements of GC11.1 are any less relevant in protecting consumers or in need of review. However, we do have to take account of its existence in considering whether to amend the requirements of the Direction. In particular, in proposing to bring services within the scope of the Direction or to remove them from the scope of the Direction, we need to consider whether those services might be more appropriately regulated under the more general requirements of GC11.1.
- 2.22 We are also not proposing to review the requirements set out in GC11.3 and GC11.4 since the evidence that we have received suggests a need to review the detailed provisions of the Direction made under GC11 rather than the over-arching requirement for CPs with a turnover in the provision of PATS in excess of £40 million per year to obtain approval of their TMBSs.
- 2.23 Finally, we are not reviewing in this consultation the level at which CPs have to comply with this Direction i.e. the £40 million threshold.⁴ We have considered whether the proportion of consumers covered by the Direction has changed. Our research indicates that there is little material difference in the proportion covered between 2008 and 2011 (the latest data we have). For fixed line, the proportion of consumers whose fixed line services were covered by the Direction in 2008 was around 93%; the proportion in 2011 was also 93%. For mobile services the proportion of consumers covered in 2008 was 95%, in 2011 it was 93%.⁵ This suggests that the coverage of the £40 million threshold and the proportion of consumers given protection by the Direction have not materially changed over the period.
- 2.24 This consultation therefore considers four issues:
- i) Whether the Direction should continue to apply to fixed and mobile voice services;

⁴ The threshold at which providers of Publicly Available Telephone Services are required to submit their metering and billing systems for approval by an Approval Body.

⁵ Ofcom research 2008 -2011

- ii) Whether the mandatory provisions of the Direction should be extended to include data services;
- iii) Whether the Direction's provisions in respect of services for large businesses should be amended or whether there is a case for excluding such services from the scope of the Direction; and
- iv) Whether the Direction's provisions in respect of wholesale services should be amended or whether there is a case for excluding such services from the scope of the Direction.

2.25 In section 3 we set out our approach and our analysis of these issues.

2.26 We have gathered evidence from a number of sources including:

- market research of consumers' use and experience of bills,
- formal information requests from CPs and ABs about billing arrangements and the operation of the Direction
- analysis of complaints data from the Ofcom Consumer Contact Team; and
- a number of other stakeholders (e.g. Which?, Ombudsman Services, Communication and Internet Services Adjudication Scheme (CISAS)).

2.27 The evidence we have gathered on the extent of billing inaccuracy and on the level of complaints is not conclusive and sometimes points in different directions. In particular, it is difficult to identify the extent of billing errors, partly because consumers themselves may be unable to judge if a bill is inaccurate due to an error in the way it was calculated or a misunderstanding of the tariff, and partly because there is wide variation in the way CPs capture and categorise billing errors and complaints. We have therefore additionally considered the extent to which consumers receive metered bills, as opposed to inclusive tariffs. This is because we consider that there may be a greater risk of consumer harm occurring from inaccurate billing when services are metered. By contrast, the accuracy requirements set by the Direction may be of less relevance in providing protection to consumers who are billed on the basis of inclusive tariffs. We have therefore considered the increased availability and take-up of inclusive tariff packages to see if that alters the need of consumers for the protections of the Direction. We do however note that, even in the case of inclusive tariff packages, CPs need to accurately measure usage in order to determine when the inclusive allowance has been exceeded.

2.28 In undertaking this review, we looked at the operation of the Direction as a whole and considered whether there are ways to modify the Direction which would reduce the burden for CPs that are subject to it, without materially increasing the risks of billing inaccuracies for consumers. We considered in this consultation the suggestion from one AB of the merits of moving away from a target based measurement of TMBS to a more principle-led approach, based on risk identification and effective resolution of billing errors to benefit consumers.

2.29 In section 3, we apply the tests for modifying the Direction in order to explain the reasons why we consider that they are satisfied in relation to the modifications that we are proposing.

Impact Assessment

- 2.30 The analysis presented in this document represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act).
- 2.31 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This reflects section 7 of the Act, which requires Ofcom to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on Ofcom's website.⁶
- 2.32 Specifically, pursuant to section 7 of the Act, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to proposals we make.

Equality Impact Assessment

- 2.33 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom those policies will apply. Equality impact assessments ('EIAs') assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.34 We have given careful consideration to whether or not our proposals set out in section 3 will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. We do not envisage that the proposals contained in this consultation will have a detrimental impact on any particular group of people.

Consultation Process

- 2.35 This consultation runs until 25 April 2013.
- 2.36 We are consulting on the principle of proposed changes to the scope and coverage of the Direction. If, following consultation, we decide it is appropriate to proceed with those changes, our intention is to work with the ABs and CPs on a detailed modification to the text of the Direction and we will consult further on those changes. This would follow the process established for modifications to the Direction in 2007/8 and in 2010/11 where, having established the principles for changes, Ofcom worked with ABs and CPs in an Experts Working Group drafting detailed amendments to the Direction for further consultation.⁷

⁶ <http://www.ofcom.org.uk/about/policies-and-guidelines/better-policy-making-ofcoms-approach-to-impact-assessment/>

⁷ <http://stakeholders.ofcom.org.uk/telecoms/policy/metering-billing/experts-working-groups/>

Section 3

Review of the scope of the Direction

Our approach to the review

- 3.1 In this section we consider, in turn, the four issues covered by this consultation (set out at paragraph 2.21).
- 3.2 For each of the issues we have considered the following options:
- Maintain the scope and requirements of the Direction (i.e. do nothing)
 - Maintain the scope of the Direction but modify the requirements
 - Extend or reduce the scope of the Direction
- 3.3 Maintaining the scope and requirements of the Direction may, for example, be appropriate if there is no evidence of any developments in the market that alter the justifications that were relied upon to impose the Direction and/or there is evidence that the Direction currently works well in practice and which justifies changes to those requirements.
- 3.4 Maintaining the scope of the Direction but modifying the requirements may, for example, be appropriate if there is evidence that developments in the market have not significantly changed the justification for imposing the Direction but that there are difficulties in applying the requirements in practice and which justify changes to those requirements.
- 3.5 Extending the scope may be appropriate if, for example, there are developments in the market which indicate that consumers of services that were not previously within the scope of the Direction would benefit from the protections provided by the Direction.
- 3.6 Reducing the scope of the Direction may be appropriate if, for example, there is evidence of developments in the market which indicate that justifications for previously including certain services within the scope are no longer valid. Similarly it may be appropriate to reduce the scope if there is evidence that the burdens of complying with the Direction outweigh the benefits of compliance, particularly where there is evidence that similar benefits could be better realised through alternative mechanisms.
- 3.7 The options are not mutually exclusive, for example, extending the scope could be combined with a modification of the requirements.
- 3.8 In considering the options, we have set out our assessment of the impact of each option on consumers, CPs and ABs.
- 3.9 The assessment is essentially qualitative. We invite stakeholder views on the impacts identified and, where appropriate, to submit information, if necessary on a confidential basis, to inform our decision.

Issue 1: Should the Direction continue to apply to fixed and mobile voice services?

- 3.10 One of the issues we explore in the review is whether changes in the market since the amended Direction was introduced in 2008 suggest that the current scope, i.e. fixed and mobile voice services, should be amended.
- 3.11 In examining this issue we have considered evidence on:
- Trends in the take up and use of voice services;
 - Consumers' use of bills including the extent to which they have inclusive calls allowances;
 - The number and type of complaints received by Ofcom from consumers about their bills;
 - The number of refunds given by CPs to the consumers in respect of billing errors; and
 - The views of the ABs and CPs about the operation and effectiveness of the Direction.
- 3.12 Where possible, we have compared current data with data from 2008 in order to consider whether any changes might indicate a change in the rationale for the Direction.

Trends in the take up and use of voice services

- 3.13 Fixed and mobile voice services continue to represent a significant segment of the UK telecommunications market. In 2011 there were 33.2m fixed lines in the UK, compared to 34.2m 2008.⁸ In 2011 the number of mobile connections rose to 82m, up from 77m in 2008.⁹ Revenues for fixed and mobile voice services were £19.4bn in 2011, compared to 21.7bn in 2008.¹⁰
- 3.14 Figure 1.1 in Annex 5 shows trends in total voice volumes from 2006 to 2011. There has been a decline in both fixed line and mobile call volumes.

Consumers' use of bills

- 3.15 Our consumer research¹¹ examined the extent to which consumers check their bills. Most fixed line consumers (52%) and around a third of mobile consumers never, rarely or only sometimes check their bills. This indicates a significant proportion of consumers rely largely on their CPs' to provide accurate bills (results presented in Figure 1.2 of Annex 5).
- 3.16 The responses to our request for information showed that, although fixed line and mobile contract tariffs often have an inclusive call element, in most cases some calls

⁸ Ofcom's Communications Market Review 2012 (CMR 2012), Figure 5.1 UK Telecoms Industry: Key statistics, p 281

⁹ Ibid Figure 5.40, Number of Mobile Connections p 319

¹⁰ Ibid, 5.23 Total retail revenue, by voice and data, p305

¹¹ Omnibus Consumer Research Feb/March and May 2012 – Ofcom ran the survey on three waves of Kantar Media's weekly face to face omnibus.

are metered. Even the most inclusive packages offered rarely, if ever, include all types of calls. International calls, calls to non-geographic numbers, for example, are typically excluded and subject to metered billing. In addition, some CPs provide call packages that have inclusive calls only at selected times of the day, such as evening and/or weekend calls but charge metered fees at other times¹². Our consumer research found that of those who check their bills, around a quarter of fixed line and a third of mobile contract consumers incur charges in addition to a monthly usage allowance (see Figure 1.3 in Annex 5).

- 3.17 Further, around half of mobile subscribers are on Pay As You Go (PAYG) tariffs, where accurate billing is important and consumers are reliant on the CP accurately applying charges up to their prepaid limit and in absence of any bill verification¹³
- 3.18 Taken together, this evidence indicates that most fixed and mobile bills (or accounts in the case of PAYG mobiles) have an element of metered billing.

The number and type of complaints received by Ofcom from consumers about their bills

- 3.19 Ofcom recorded over 14,000 billing complaints in 2007¹⁴ and approximately 5,400 billing complaints in 2012, of which 95% were in relation to voice services.
- 3.20 The Communication and Internet Adjudication Scheme (CISAS),¹⁵ reports that disputes relating to billing accounted for a significant proportion (45%)¹⁶ of the total dispute cases it received between Q1 2011 and Q3 2012, see Figure 1.6 Annex 5. Ombudsman Services report that in the year 2011/12, 19% of their cases related to disputed charges and 7% to billing.
- 3.21 Taken together, this data suggests that billing remains a concern for consumers. However, Ofcom's complaints data indicates that the level of concern may have reduced since 2007. Whilst it is not possible to attribute this solely to the 2008 Direction, the reduction in complaints during the operation of the Direction suggests that the Direction may have had a positive impact.

The number of refunds given by CPs to the consumers in respect of billing errors

- 3.22 We asked CPs to provide the number of refunds given to consumers as a result of billing errors.¹⁷ The information provided by CPs showed that there is wide variation in the way they collect and report on refunds made to consumers for billing errors and it has not been possible to identify any clear trends or issues. For example some CPs capture voice and data complaints together, some will capture fixed and mobile services together and others will capture complaints based on individual products. Additionally each CP has its own categorisation system, and will not necessarily keep record of which complaints result in refunds, making it difficult to draw any conclusive evidence from the responses.

¹² CP responses to s.135 information request in relation to inclusive allowances on voice services.

¹³ CMR 2012, Figure 5.41 'The number of mobile connections, by pre pay and post pay', p 319

¹⁴ The categories that Ofcom uses to log complaints that our contact centre receives from consumers have changed between 2007 and 2012. The figures used are from categories most closely aligned to complaints about disputed bills.

¹⁵ CISAS and Ombudsman Services are alternative dispute resolution schemes approved by Ofcom under section 54 of Act for the purpose of resolving disputes between CPs and their consumers.

¹⁶ Total of 4242 complaints, 1899 related to billing

¹⁷ CP responses to s.135 request, in relation to billing accuracy complaint numbers that resulted in refunds.

The views of CPs about the operation and effectiveness of the Direction.

3.23 We asked CPs for their views on the operation of the Direction. 11 of the 16 CPs responding stated that they had made changes and improvements to their billing system as a result of AB involvement. They indicated that the Direction had facilitated these changes and improvements by providing:

- meaningful guidance in helping to meet the requirements of the Direction with minimum overheads incurred;
- a framework for compliance and the measurement of accurate billing;
- a framework that facilitated improvement to CP's processes; and
- a platform for discussion on Metering and Billing issues and communication with Ofcom.

3.24 In its response one CP, although acknowledging that the regime has worked well, questioned whether approval by an AB should remain a requirement. The CP did not provide further evidence in support of its argument. Another CP expressed a view that the approval requirements were 'relatively straight forward to meet' but did not provide any benefits to their business.

3.25 However, we recognise that both ABs and CPs have raised issues about the practicality of compliance with some aspects of the requirements, particularly in respect of how the requirements of the 1:50k accuracy limit and £600 discretionary tolerance levels apply to corporate and wholesale services. These are considered in issues 3 and 4.

Options

3.26 Set out below are three options which we consider in light of the evidence above. We have considered (i) maintaining the current scope of the Direction and its requirements (the 'do nothing' option), which in this case would involve maintaining the current scope of the Direction as applying to fixed and mobile voice services; (ii) maintaining the scope of the Direction and modifying the requirements; and (iii) reducing the scope of the Direction by removing either or both fixed and mobile voice services.

Option 1.1: Maintaining the scope and requirements

3.27 Under this option, the Direction would continue to cover fixed and mobile voice services for individual and small and medium business consumers and the requirements set in the Direction would be unchanged.

Impact on consumers

3.28 The evidence suggests that a significant proportion of consumers wholly or partly receive metered bills. Ofcom and the Alternative Dispute Resolution (ADR) schemes continue to receive complaints about inaccurate bills. Whilst there is some evidence that complaint levels have fallen, this suggests that billing accuracy remains a concern for consumers.

- 3.29 Maintaining the Direction would ensure that the accuracy of CPs' billing systems continued to be assessed and approved by the ABs and that CPs and ABs would continue to take steps to ensure the accuracy of consumers' bills.

Impact on communications providers

- 3.30 Maintaining the Direction would mean that CPs would continue to have to seek and obtain approval of their billing systems.
- 3.31 Under this option, CPs would face similar costs to now with respect to compliance with the Direction. We asked CPs to estimate their costs for compliance with the Direction. These estimates varied significantly and often did not provide a clear distinction between costs related directly to compliance with the Direction and those attributable to CPs' own billing, revenue assurance and operational activities necessary to comply with the more general accuracy requirements of GC11.1. In addition, the wide range of costs reflected the size and extent of the CPs own compliance and improvement activities. The majority of CPs had costs less than £0.5m and the average cost was £0.2m.¹⁸ On average this represents an estimated 7p per fixed line¹⁹ per year and 1.5p per mobile subscriber per year.²⁰
- 3.32 As mentioned above, a significant proportion of CPs reported improvements to their metering and billing systems that the Direction and the consequent engagement with the ABs have brought about. This standard would be expected to be maintained if the current scope and requirements of the Direction were maintained.

Impact on approval bodies

- 3.33 Maintaining the Direction would mean that the ABs would continue to carry out the approval process as they do now. We would expect that the costs and resource requirements on the ABs would remain broadly as they do now and would continue to be passed on to CPs.

Option 1.2 : Maintaining the scope and modifying the requirements

- 3.34 Under this option, the Direction would continue to cover fixed and mobile voice services and CPs would need to have their metering and billing systems assessed and approved by an AB. However, instead of having detailed requirements, such as acceptable error rates and tolerances, the Direction would be focussed on setting high level requirements for accuracy.
- 3.35 One of the ABs and two CPs suggested there was limited value in having a target based approach in the Direction. They suggested that the rigid targets, such as the £1:50k tolerance, risked becoming an outdated approach to technical standards and should be removed. Instead, they proposed there should be more of an emphasis on identifying the causes of both billing errors and adjustments, and late billing.

¹⁸ CP responses to s.135 request, in relation to GC11.3 compliance.

¹⁹ This was calculated based on the aggregated compliance costs for the nine fixed line providers that provided information in response to the s.135 request (around £2m) divided by the estimated fixed lines that they provide (approximately 28m).

²⁰ This was calculated based on the aggregated compliance costs of 4 mobile providers given in response to the s.135 requests and divided by an approximation of their mobile subscriptions. The estimated per subscriber charge is lower for mobile subscribers than for fixed lines due to the higher mobile subscriber numbers. Subscriber numbers have little effect on the overall AB compliance cost so this just distributes the same costs across a wider subscriber base.

- 3.36 It was also suggested by some CPs that the trend to converged fixed/mobile/VoIP services may make billing more complex and may make target-based measures harder to achieve (even if issues around large businesses and wholesale are addressed). However, they provided no evidence to support that billing will necessarily become more inaccurate with these trends.

Impact on consumers

- 3.37 This option would provide continued protection for consumers in terms of giving assurance that the metering and billing systems of their CP would continue to be assessed and approved by ABs. The level of protection would differ from current arrangements (option 1.1) in that it would not ensure maximum error rates and tolerances.
- 3.38 Without detailed requirements and targets it would be likely that the ABs would have to make more interpretations than currently in assessing whether CPs meet the Direction's requirements. This could lead to variations in the levels of billing accuracy expected of CPs and so experienced by consumers. This risk might diminish over time as precedent became established and what was expected of CPs to obtain approval by ABs became clearer.

Impact on communications providers

- 3.39 Under this option CPs would continue to have to seek and obtain approval by the ABs of their billing systems, although they would not be required to meet the detailed requirements of the current Direction. This might reduce the costs of compliance and provide more flexible arrangements.
- 3.40 In order to satisfy themselves that the CPs' systems provide sufficient levels of accuracy, the level of CPs' engagement with the AB's is unclear; on the one hand it could rise and on the other hand it could fall. However, with high-level requirements, there could be more scope for uncertainty about what was needed for approval and this could potentially lead to uncertainty about requirements, increased engagement with the ABs and so increased costs.
- 3.41 As precedent became established, it might be that costs could reduce.

Impact on approval bodies

- 3.42 Under this option, the ABs would continue to carry out the approval process, although on the basis of more general requirements. Without detailed requirements and targets the ABs would be likely to have to make more interpretations of the Direction's requirements. In the short term this might require additional work until precedent could be established. ABs would have to be satisfied that a CP could measure, identify and resolve issues and demonstrate control and improvement over time. It is therefore also likely that the development of more general requirements would call for the ABs to work closely together to ensure consistency of interpretation and might lead them to develop guidance. This additional work might in the short term increase ABs costs and those costs might be passed on to CPs.

Option 1.3: Reducing the scope

- 3.43 Under this option, the requirements of the Direction in respect of voice services, either mobile or fixed or both, would be removed.

Impact on consumers

- 3.44 This option would reduce protection for consumers with respect to billing accuracy. Consumers who were not able to check their bills for accuracy would not have the reassurance that their CP's metering and billing system had been assessed for accuracy by an AB. As the evidence suggests that a significant proportion of both mobile and fixed consumers wholly or partly receive metered bills and that complaints about billing issues for both services remain significant, this could have a negative impact on consumers.

Impact on communications providers

- 3.45 Reducing the scope of the Direction would mean that CPs would not have to seek approval from ABs for their metering and billing systems. This would mean the CPs would not have to meet the direct costs of AB approval.
- 3.46 GC11.1 would still apply and therefore CPs would remain subject to the general requirement to ensure accurate bills, so CPs would have to satisfy themselves that they met that requirement (and would incur any associated compliance costs).
- 3.47 As CPs have reported improvements made to their metering and billing systems as a result of their engagement with the ABs, the opportunity for similar improvements in future might be lost under this option.

Impact on approval bodies

- 3.48 Under this option, the AB's would cease to have a role in approving the metering and billing systems in respect of voice services for residential consumers, large businesses and small and medium sized businesses.

Our proposal

- 3.49 We have considered whether a change to the current arrangements is merited by looking at changes in the market, changes in consumer behaviour and at whether the Direction has been operating effectively.
- 3.50 The evidence that we have gathered indicates that:
- a significant proportion of voice bills remain metered where it is important that consumers can be assured of their accuracy;
 - CPs and the ABs report that the Direction has driven improvements to their billing systems;
 - complaints to Ofcom about the accuracy of bills for voice services have fallen during the period of operation of the 2008 Direction, suggesting that the Direction may have had a positive effect;
 - however, complaints to Ofcom and the ADR Schemes suggest that billing accuracy of voice calls remains a concern to consumers;

- the costs of compliance to CPs are relatively low, estimated at an average of 7p per fixed line²¹ per year and approximately 1.5p per mobile subscriber per year.²²
- 3.51 We believe this evidence indicates a continuing need for a Direction and does not support the adoption of option 1.3. We note that one CP queried the need for approval by an AB and another CP queried whether the approval requirements provided benefits to their business. However, neither provided evidence to support their views. Therefore, on balance, our analysis of impacts indicates that option 1.3 would risk reducing protection for consumers with no evidence of any counter-veiling benefit, which we do not think is appropriate.
- 3.52 We have therefore considered whether option 1.1 (the retention of the current scope and requirements of the Direction) or option 1.2 (the retention of current scope but with modified requirements) should be proposed.
- 3.53 The evidence indicates that the current Direction appears generally to be operating effectively and has resulted in improvements to CPs billing systems and brought benefits to consumers and to communications providers. While some CPs suggested moving away from a target-based approach, none provided evidence to demonstrate why such a move was necessary. By contrast, the fact that complaint levels have fallen during the period of operation of the Direction suggests that the Direction may have had a positive impact. However, there is an ongoing need for the Direction to remain in place since complaint numbers remain significant and complaint data indicates that billing accuracy remains a concern for consumers. Furthermore, compliance with the Directive does not appear to be unduly onerous.
- 3.54 In light of this evidence, we believe that retaining the current scope and requirements (option 1.1) is the most appropriate approach. Whilst we recognise that option 1.2 would retain a level of protection for consumers, it would reduce certainty for consumers and CPs over the level of protection being delivered and may lead to differing levels of protection being provided between CPs. Furthermore, we do not consider that we have sufficient evidence of problems with the operation of the Direction (except in relation to the specific issues that are addressed separately below), to justify changing the requirements of the Direction, particularly when balanced against the risk of CPs and ABs incurring additional costs and the possible loss of protection for consumers that might result from the changes.
- 3.55 We propose that option 1.1 i.e. retaining the status quo for fixed and mobile voice calls for residential and small and medium -sized businesses in the Direction should be adopted.

Question 1: Do you agree that the Direction should continue to apply to fixed and mobile voice services (aside from wholesale services and services for large business) and that its requirements should remain unchanged? Please provide reasons to support your response.

Issue 2: Should data services be brought with the scope of the mandatory provisions of the Direction?

- 3.56 Provisions on billing accuracy in respect of mobile data and fixed broadband services are contained in the Direction. However these are voluntary provisions (contained in

²¹ see footnote 15

²² see footnote 16

Annex D of the Direction). Under these provisions, CPs can apply to have their TMBS approved when their relevant turnover from such services exceeds £5m

- 3.57 The growing importance of data services raises a question as to whether it should be treated in the same way as voice services and become a mandatory service within the Direction.
- 3.58 In examining this issue we have considered evidence on:
- Trends in the take up and use of data services;
 - The extent to which inclusive tariffs feature in bills for data services;
 - The extent to which consumers exceed their allowance for data usage; and
 - The extent of compliance with the voluntary requirements of the Direction.

Trends in the take up of data services

- 3.59 The market has seen an increasing take up of data services in both mobile and fixed data since 2008:
- Use of fixed broadband services has increased from 58% of households in 2008²³ to 72% of households in 2012.²⁴
 - Smartphone ownership rose to 39% of UK adults in Q1 2012 (up 12 percentage points on Q1 of 2011).²⁵
 - Tablet ownership increased from 2% to 11% of UK households over the same period.²⁶
- 3.60 The growing importance of data services may suggest that it should be treated in the same way as voice and brought within the Direction. However, data is typically taken with an allowance for a set monthly fee which may also suggest that accuracy of metered charges is less important to consumers if they usually do not exceed their allowance.
- 3.61 Future trends are unclear. 4G services are expected to result in increased mobile data use because it will be easier and quicker to download data. This may lead to increasing incidences of out-of-allowance charges. However, the size of data allowances may also increase as a result. Measures to combat 'Unexpectedly High Bills',²⁷ targeted in particular at international charges may also reduce the potential for consumer harm.

²³ CMR 2009, nearly two-thirds of households had a fixed broadband connection in Q1 2009, p 246 – Q1 2009 percentage compared to Q1 2008 percentage.

²⁴ CMR 2012, Fixed broadband take-up increased in the year to Q1 2012, p 333

²⁵ CMR 2012, Take-up of newer connected devices shows rapid growth, p 26

²⁶ Ibid.

²⁷ 'Unexpectedly High Bills' is when a consumer uses a service (consciously or not) and is then billed 'accurately' for those services but may not realise they were using the service; didn't appreciate the actual costs; or thought the services used were part of an existing agreed bundle.

Consumer complaints about data billing

- 3.62 Ofcom's Consumer Contact Team recorded 29 complaints primarily about data billing from 1 September to 31 October 2012; two related to fixed line data and 27 to mobile data. This is significantly lower than the 1,800 complaints about billing for fixed and mobile voice calls in that period.²⁸
- 3.63 A similar proportion of complaints were attributed to data by the Ombudsman Services. For example, of the cases relating to billing they considered in September 2012, 4% related to data services and 96% to voice services.²⁹
- 3.64 Taken together, this suggests that consumers have fewer concerns about the billing of data services, than they do about voice services, potentially significantly so.
- 3.65 We requested information from CPs on billing complaints and on refunds given to consumers.³⁰ However, as with voice services (see para 3.22), due to the wide variation in the way CPs capture and categorise billing errors and complaints it is difficult to identify specific causes for billing inaccuracies and harmonise data between CPs. For example, some CPs capture voice and data complaints together, some will capture fixed and mobile services together and others will capture complaints based on individual products. Additionally each CP has its own categorisation system, and will not necessarily keep record of which complaints result in refunds, making it difficult to draw any conclusive evidence from the responses.
- 3.66 In terms of complaints resulting in refunds, the data from CPs is sparse. The limited information available does, nevertheless, indicate that significantly more complaints have resulted in refunds for mobile data services than for fixed broadband, but there were significantly more complaints resulting in refunds for voice services than for data services.

The extent to which consumers exceed their allowance for data usage

- 3.67 Our market research³¹ shows that 63% of fixed broadband consumers always or sometimes check their bills and 21% always or sometimes experience out-of-allowance charges (see Figures 1.2 and 1.5 in Annex 5). 33% of mobile contract consumers report that they always or sometimes experience out-of-allowance charges for data (see Figure 1.4 in Annex 5).³² For mobile users where consumers exceed their data allowance, charges were on average between £6 and £10 in addition to their contractual monthly fee.³³
- 3.68 Information provided by CPs indicates a lower incidence of out-of-allowance charging relative to the consumer research. CPs reported that over a six-month period³⁴ up to 6.5% of fixed broadband consumers, and up to 14% of mobile data consumers exceeded their allowance.

²⁸ Ofcom evidence – CCT complaints data

²⁹ Taken from September complaints information provided by Ombudsmen Services, of 50 billing complaints for the month relating to billing, 37 (74%) were related to fixed calls, 11 (22%) were related to mobile and 2 (4%) were related to data.

³⁰ CP responses to s.135 request, in relation to billing accuracy complaint numbers that resulted in refunds.

³¹ Omnibus Consumer Research Feb/March and May 2012

³² Ibid.

³³ CMR 2011, Average out of allowance costs billed to pay-monthly consumers, p 318

³⁴ July – December 2012

- 3.69 We asked 16 CPs whether they complied with the voluntary provisions for data services in the Direction. Ten CPs did not comply with the voluntary provisions in the Direction. Three CPs stated they were not complying but had specific measures in place and three CPs stated they were complying and had specific measures in place.³⁵ The ABs have not reported any CPs as having sought and obtained approval in accordance with the Direction's voluntary provisions on data.

Options

- 3.70 Set out below are three options which we consider in light of the evidence above. We have considered (i) maintaining the current scope of the Direction and its requirements (the 'do nothing' option), which in this case would involve not extending the Direction to include data services; (ii) maintaining the scope of the Direction and modifying the voluntary provisions; (iii) and extending the mandatory requirements of the Direction to include mobile and fixed data services.

Option 2.1: Maintaining the current voluntary provisions on data services

- 3.71 Under this option, the voluntary provisions of Annex D (on data services) of the Direction would continue to apply.

Impact on consumers

- 3.72 If we maintain the voluntary provisions, we could expect the current level of protection of consumers to continue. As noted above, consumer complaints to Ofcom and ADR schemes indicate that data billing issues are of concern for consumers, albeit at a lower level than for voice services.
- 3.73 The trend since 2008 has been for increased use of data services by consumers and with the roll out of 4G and superfast broadband services. We expect this trend to continue. If this increased use leads to more consumers experiencing out-of-allowance charging, there is a risk that the current voluntary provisions may be inadequate to protect consumers. However, given the limited roll out of 4G to date, there is a high degree of uncertainty in predicting future trends and the potential response of CPs and consumers.

Impact on communication providers

- 3.74 CPs would continue to be free to apply the voluntary provisions of the Direction relating to data services. However, we recognise that the majority (possibly all) of CPs have not sought approval from the ABs of their data billing systems and that any measures that the CPs have implemented sit outside the audit process. We assume that that would continue to be the case in the absence of any changes to the Direction.

Impact on approval bodies

- 3.75 There would be no impact on ABs unless more CPs sought approval of their compliance with the voluntary requirements of the Direction.

³⁵ CP responses to s.135 request, in relation to Compliance with voluntary data provisions of the Direction.

Option 2.2: Updating the current voluntary provisions

- 3.76 Under this option, the provision of data services would continue to be subject to voluntary provisions of the Direction but Ofcom would ask the ABs and CPs to review and propose updates, as appropriate, to the provisions. Following due consideration of any proposed changes, we would make any revisions to the provisions which would be incorporated into the Direction as a set of non-mandatory measures
- 3.77 The aim of the review would be to consider whether the current provisions should be updated particularly in light of the greater use of data services since the Direction was last reviewed in 2007/8 and other developments such as next generation fixed broadband services and 4G mobile services. Ofcom would expect the ABs and CPs to consider how to make the provisions on data an effective tool for CPs seeking to establishing billing accuracy both for their own revenue assurance purposes and for demonstrating compliance with GC11.1. The review could also consider whether it is appropriate to move from measures based on acceptable error rates and tolerances to a more principle-based approach, where problems with a CP's data service billing would be identified and addressed and error rates progressively reduced.
- 3.78 As well as updating the measures and ensuring their effectiveness, the aim of the review would be to encourage more CPs to consider adopting such measures for the billing of data services. Furthermore, in order to reinforce to CPs the value of adopting the voluntary measures, we would make it clear that we would actively monitor data billing through complaints and would regard adoption of the voluntary provisions as an indicator of compliance with GC11.1.
- 3.79 We would also keep the voluntary provisions under review and consider mandatory provisions should there be evidence that justifies regulatory intervention to address consumer harm.

Impact on consumers

- 3.80 The aim of having relevant and updated provisions on data services is to encourage CPs to seek and obtain approval from ABs for their systems. If this aim is met, it should provide consumers with assurance that the accuracy of data billing is being appropriately monitored and assessed.

Impact on communication providers

- 3.81 By ensuring that the provisions in the Direction were up-to-date and relevant, CPs might be more likely to seek approval for their billing systems. This would provide them with assurance about the accuracy of their systems for data and provide them with evidence that they may be able to rely on to demonstrate compliance with GC11.1.
- 3.82 There would be costs for the CPs seeking approval from ABs. However, as these measures would be voluntary and developed with significant input from CPs, we would expect the measures not to lead to unduly high costs for CPs.

Impact on approval bodies

- 3.83 ABs might be expected to play an increased role if more CPs seek approval from ABs of their data billing systems as a result of the provisions in the Direction having been made more relevant, and it having been made clear to them that adopting the voluntary measures might be evidence of compliance with GC11.1.

Option 2.3: Extending the scope

- 3.84 Under this option, the mandatory provisions of the Direction would be extended to include data services. As with Option 2.2, as part of this process we would expect the current provisions to be reviewed and updated as appropriate.

Impact on consumers

- 3.85 As with option 2.2, we would expect this option to provide assurance to consumers that CPs' billing systems were being assessed for accuracy. However, complaints evidence currently suggests a lower level of concern about data than voice services. We also have evidence of a greater use of inclusive allowances for data than for fixed voice. Therefore, extending the scope of the mandatory provisions of the Direction might be of limited benefit for consumers.
- 3.86 Although there is currently a lower level of problems with billing for data services, there is a possibility that problems may increase in the future as consumer demand grows and new technologies are introduced. In those circumstances, extending the scope of the Direction might offer greater benefits to consumers in terms of protection.

Impact on communication providers

- 3.87 CPs would need to have their data billing systems approved. This would lead to costs and resources being assigned to the approval process. We would expect the costs to be similar to those for voice services. Some CPs' billing and reporting systems may combine data and voice services so there may be some ability for them to minimise additional costs.
- 3.88 CPs may benefit from having improvements to their billing systems identified by ABs. This benefit has been reported in respect of voice services, though the scope for benefits may be limited for data services at the current time, given the lower level of apparent problems.

Impact on approval bodies.

- 3.89 ABs would be expected to work with CPs to develop appropriate systems in order to demonstrate compliance with the Direction.

Our proposal

- 3.90 It is clear that data use has increased since the Direction was last reviewed in 2008. We also expect usage to continue to grow in particular as next generation broadband services and 4G services are rolled out. However it is not yet clear that errors in billed data or consumer harm have reached levels that justify intervention by Ofcom to require CPs to seek approval from ABs for their data billing systems. We therefore do not believe it is appropriate to propose that data services become mandatory parts of the Direction.
- 3.91 Nevertheless given the difficulty that consumers have in verifying the accuracy of data bills, we continue to believe that there is benefit in CPs having the opportunity to provide their customers with assurance about the accuracy of their billing systems. We therefore believe that having voluntary provisions remains appropriate. Compliance with voluntary measures, assessed by an AB, is one means by which CPs may be able to demonstrate to Ofcom how they are complying in respect of the

general accuracy requirements of GC11.1. We consider that making it clear that we will monitor data billing and keep the voluntary provisions of the Direction under review may provide a greater incentive to CPs to adopt the voluntary measures to a greater extent than is the case currently.

- 3.92 Moreover, given the changes in the market since they were introduced, we believe that the voluntary provisions should be reviewed and updated as appropriate to make them more relevant and useful for CPs. We therefore propose option 2.2. See paragraph 3.77.

Question 2: Do you agree that encouraging, but not mandating, the inclusion of data services in the Scheme represents the most proportionate way of protecting the users of those services from inaccurate billing?

Question 3: Do you agree that the provisions on data billing in Annex D of the Direction should be reviewed and updated? Please identify any issues that you believe the review should consider.

Issue 3: Should the Direction apply to billing for large businesses?

- 3.93 The Direction currently covers all businesses regardless of size. As a result, the detailed requirements of the Direction that apply to services for residential consumers and small and medium- sized businesses apply equally to services for large business consumers.
- 3.94 As explained in paragraph 2.17, the ABs and CPs have reported difficulties in meeting some of the detailed requirements of the Direction in respect of services for large businesses. They have also argued that large business do not need the same level of protection in respect of billing accuracy as residential consumers and smaller businesses.
- 3.95 We consider below the arguments put to us by CPs and the ABs and set out options for the provisions in the Direction in respect of large businesses.

The extent to which large businesses need the protection of the Direction

- 3.96 Most CPs and ABs favour the removal of large businesses services from the Direction altogether. They argue that:
- large businesses have the ability to monitor incorrect billing often having teams responsible for checking bills;
 - large businesses have significant buyer power as a result of their large communications spend and are more likely to have any concerns and complaints addressed quickly;
 - the large business consumer has an easier route to have problems addressed as CPs provide such businesses with account managers who are responsible for managing the relationship; and
 - large businesses have bespoke tariffs which need additional oversight and checking by the CP which minimises the risk of errors.

- 3.97 The evidence for removing large businesses from the Direction has come entirely from CPs and we do not currently have any significant evidence from large business consumers. We can infer some general opinions from the Business Consumer Experience Research Report, which Ofcom published in 2010. This report indicated that businesses rarely give billing problems as a reason for dissatisfaction with their fixed or mobile services. For fixed services 2% of issues raised were billing related and for mobile services this accounted for 1%. However, this survey covered all businesses, not specifically large businesses, and did not directly address the issues raised by the CPs in their arguments.
- 3.98 Given the one-sided nature of the evidence available to date, we have adopted a cautious approach in considering the options below. We invite views and evidence in particular from large business consumers on the extent to which they regard the protections of the Direction to be important to ensuring the accuracy of the bills that they receive and on the points made by CPs namely:
- Large businesses are able to monitor their own bills effectively;
 - They receive bespoke tariffs which reduce the likelihood of billing errors; and
 - They can have billing errors addressed easily.

Options

- 3.99 Set out below are three options which we consider in light of the evidence above. We have considered (i) maintaining the current scope of the Direction and its requirements (the 'do nothing' option), which in this case would mean that large businesses would continue to have the protection of the Direction; (ii) maintaining the scope of the Direction ; and (iii) modifying the requirements and removing large businesses from the scope of the Direction covering fixed voice and mobile services.

Option 3.1 : Maintaining the scope and requirements

- 3.100 Under this option the provision of voice services by CPs to large businesses would continue to be subject to the requirements of the Direction and the current accuracy limit and allowable tolerances would continue to apply.
- 3.101 ABs and CPs report that the accuracy limit and allowable tolerances are not practicable for large business services as the volume of traffic means that the £600 threshold and 1:£50000 error rates (set out in paragraph 2.14), are routinely triggered. In practice the ABs either disregard breaches of the Direction in respect of large business services or focus on seeking a reduction in the amount and level of breaches.

Impact on consumers

- 3.102 Large business consumers would continue to have the protection of the Direction in respect of voice services. However, given the problems reported by the ABs and CPs in meeting the tolerances and error rates set in the Direction in respect of services for large businesses, this protection has been limited in practice.

Impact on communication providers

- 3.103 The CPs would continue to be audited with consequent financial and resource costs. They would continue to benefit from any improvements suggested by the ABs.

However, the issues identified by ABs and CPs about the practical application of the accuracy and tolerance limits would not be addressed and technical breaches would continue to occur.

Impact on approval bodies

- 3.104 Approval Bodies would continue to audit CPs compliance under the current requirements of the Direction and ABs would have to work round and apply interpretative compliance solutions.

Option 3.2: Maintaining the scope and modifying the requirements

- 3.105 Under this option, services to large businesses would remain under the Direction but we propose the tolerance and accuracy limit set out in Annex B of the Direction would not be applied. This would essentially leave requirements on CPs to report billing errors and refunds in respect of corporate consumers to the ABs. The ABs would then focus on ensuring appropriate processes were in place and on understanding what was driving billing errors/refunds in order to seek reductions in errors over time.

Impact on consumers

- 3.106 CPs and ABs have argued that large businesses have certain attributes and are more able to verify their bills and address billing issues. Assuming that to be the case, they can place greater pressure on CPs to ensure the accuracy of their bills and therefore they are less reliant on the tolerance and accuracy limit. In any event, large businesses are unlikely to notice the removal of the tolerance and accuracy limit if they are disregarded in practice.
- 3.107 Furthermore, this option might benefit large businesses as ABs would continue to work with CPs to develop systems and processes to identify the cause and effect of billing inaccuracy to benefit consumers.

Impact on communication providers

- 3.108 Not applying the tolerance and accuracy limit would essentially leave requirements on CPs to report billing errors and refunds in respect of large business consumers to the ABs. It would also reduce the burden on CPs by removing a requirement that they and the ABs state is not working in practice.

Impact on approval bodies

- 3.109 ABs would continue to focus on ensuring that CPs have appropriate processes in place to ensure that large businesses receive accurate bills. As part of that, they would need to make sure that they had a clear understanding of what was driving billing errors/refunds in order to seek reductions in errors over time.

Option 3.3: Reducing the scope

- 3.110 Under this option services to large businesses would be removed from the requirements of the Direction.

Impact on consumers

- 3.111 Large businesses would cease to have the protection of the Direction and allowable tolerances and accuracy limit would not apply. As a result, they would need to rely on their own checking processes and contractual arrangements with their CP to verify their bills.
- 3.112 CPs and ABs identified various attributes that large businesses have (see paragraph 3.95 above), they argued, should mean that large businesses do not need the protection of the Direction. As explained above we are reliant largely on evidence from CPs so it is difficult to be certain about the impact on businesses. However, if we receive further evidence to support the CPs' and ABs' arguments, that would indicate that removing large businesses from the scope of the Direction would not result in a material loss of protection against billing inaccuracy for large businesses.

Impact on communication providers

- 3.113 The majority of CPs are in favour of removing large businesses from the Direction. We expect that the effect of such a removal to reduce the burden and costs on CPs as they would no longer need to seek approval for services to large businesses and would not need to comply with the tolerances they currently consider impossible to meet. However, it is not clear the extent of potential savings due to the wide variation in the way CPs allocate their compliance costs (see para 3.31).
- 3.114 Furthermore, CPs would still be subject to the accuracy provisions of GC11.1 and, according to their evidence, would also still be subject to the commercial pressures from large business consumers to ensure billing accuracy. Therefore, although they may not be subject to audit costs in respect of services for large business consumers, other costs of ensuring of billing accuracy might not change significantly.

Impact on approval bodies

- 3.115 ABs would no longer be required to assess compliance of CPs against the requirements of the Direction and it would be up to CPs to ensure they had appropriate billing procedures in place in providing communication services to large business clients.

Our proposal

- 3.116 The evidence from ABs and CPs indicates that the requirements in respect of error rates and tolerances in respect of large business consumers cannot practically be met. For this reason we do not consider it appropriate to proceed with option 3.1 as this option would involve maintaining a set of requirements that are in practice disregarded and therefore do not add any protection for consumers.
- 3.117 We note CPs' arguments that large businesses have a better ability to identify billing errors and to ensure that they are addressed than other consumers. However we are aware that the evidence for removing services to large businesses has come entirely from CPs and we do not currently have any significant evidence from relevant business consumers. Given the one-sided nature of the evidence, we consider it appropriate to adopt a cautious approach and are not at this stage proposing to remove services to large businesses from the scope of the Direction.
- 3.118 However, we invite views in particular from large business consumers on whether they agree with the arguments put forward by the CPs and ABs that there are

features of large businesses' arrangements with CPs that make the protections of the Direction less relevant to them.

- 3.119 If we receive evidence that large businesses do not need the protections of the Direction, we consider that it would be appropriate to remove such services from the scope of the Direction since the costs to CPs in complying with the requirements would outweigh any benefits to consumers.
- 3.120 However, if the evidence indicates that there is a risk that, by removing such services from the Direction, consumers would lose valuable protections against inaccurate bills, we propose maintaining the current scope of the Direction, but modifying the requirements by removing the accuracy limits and tolerances set in Annex B of the Direction in respect of large business services (option 3.2). It is clear that the issue of billing accuracy for large businesses needs to be addressed in any event as compliance with key provisions within the Direction is not currently achievable for these services.

Defining large businesses

- 3.121 If we pursue options 3.2 or 3.3 we will have to define 'large businesses'. CPs and ABs we have canvassed have not been able to provide us with a workable definition to date. CPs have suggested that large businesses have particular characteristics such as having account managers and bespoke billing, as well as large telecom spend.
- 3.122 For option 3.2 or 3.3 to work effectively, in particular where the CP has other consumers that will remain fully covered by the Direction, the AB and CP will have to be able to identify easily the consumers that are to be excluded or treated in a different way.
- 3.123 We are concerned that a definition based on the consumers having bespoke tariff and an account manager may be difficult to implement in practice. We therefore propose a definition based on telecoms spend, information which should be more easily available from billing systems than these other possible service characteristics.
- 3.124 Our proposal is for a definition that is based on consumer telecoms spend. We propose that the Direction would not apply (option 3.3), or not apply in part (option 3.2), in respect of business consumers with annual telecoms spend in excess of £50k per annum. We have identified this threshold in part because Ofcom research³⁶ indicates that UK businesses with a total communications spend (fixed, mobile and related services) over £50k plus per annum are likely to have more than 250 UK employees and that most businesses that spend £50k plus per annum have an annual turnover of £25m plus. In addition, we believe this threshold would be indicative of large business consumers who are more likely to have the relevant attributes referred to above (for example, they are likely to have account managed services and bespoke/flexible arrangements in place in relation to charging). Furthermore, as noted above, large businesses with that level of turnover may have the ability to use their negotiating power and apply leverage in addressing billing issues with their CP more effectively. If that is the case, they are likely to be less reliant on the application of unworkable tolerances and accuracy limits.
- 3.125 We note that we have limited evidence to support this approach and we therefore welcome views from stakeholders on the proposed £50k threshold.

³⁶ Ofcom research, August – September 2012 .

Question 4: Do you agree that the scope of the scheme should continue to apply to large businesses? Please provide evidence for your views in particular providing evidence on whether large businesses are able to and do monitor their bills more effectively than other consumers?

Question 5: Do you agree that with the proposal that error rates and tolerances set in the Direction should not apply in respect of large businesses? What requirements should apply in the absence of error rates and tolerances, if any?

Question 6: Do you agree with the suggested definition of a large business as having a communication spend in excess of £50K? Please provide reasons and any evidence for any response.

Issue 4: Should the Direction apply to Wholesale services?

- 3.126 The Direction currently covers retail and wholesale services. The detailed requirements of the Direction in terms of error rates and tolerances set out in Annex B that apply to retail services apply equally to wholesale services.
- 3.127 As explained in paragraphs 2.17, the ABs and CPs have reported difficulties in meeting some of the detailed requirements of the Direction in respect of wholesale services. Some CPs have also argued that CPs using wholesale services do not need the same level of protection in respect of billing accuracy as retail consumers.
- 3.128 We consider below the arguments put to us by CPs and the ABs and set out options for the provisions in the Direction in respect of wholesale services.
- 3.129 When we asked CPs and ABs for their views on the operation of the Direction, most CPs favoured the removal of wholesale services from the Direction altogether. They argued that i) the Direction should be focused on retail billing noting that GC11.1 relates to billing for consumers not to billing for wholesale services and ii) CPs receiving wholesale services have the ability to monitor incorrect billing and have contractual terms, including specific service level agreements and penalties/remedies, in place to address errors. CPs also have the option of raising issues and disputes with Ofcom if inaccuracies cannot be addressed adequately through contracts.
- 3.130 In addition, ABs and CPs providing wholesale services report that the accuracy limit and allowable tolerances are not practicable for wholesale service as the volume of traffic means that the £600 threshold and 1:50000 error rates are easily and routinely triggered. In practice the aim of the ABs in respect of wholesale services has therefore become not to achieve compliance but instead to seek a reduction in the amount and level of breaches. In other words, again, one possibility is that thresholds and error rates are redundant.
- 3.131 One AB and two CPs indicated that they would have concerns if wholesale services were removed from the Direction. They argued that, for calls carried over more than one network, the retail CP would be taking into account the call records of the wholesale provider in billing the retail consumer so ensuring the accuracy of those records was important.

Options

3.132 Set out below are three options which we consider in light of the evidence above. We have considered; (i) maintaining the current scope of the Direction and its requirements (the 'do nothing' option), which in this case would involve wholesale services remaining under the Direction; (ii) maintaining the scope of the Direction and; (iii) modifying the requirements and removing wholesale services from the mandatory requirements of the Direction.

Option 4.1: Maintaining the scope and requirements

3.133 Under this option, wholesale services would continue to be subject to the current requirements of the Direction and the accuracy and tolerance limits would continue to apply.

Impact on consumers

3.134 With the current scope and requirements maintained, consumers would have the current level of assurance that the wholesale CPs (where they meet the £40 million turnover threshold) supplying their retail CP would have had their billing system approved in accordance with the Direction, However, as already noted, the tolerance and accuracy limit are in practice disregarded.

Impact on communication providers

3.135 The current accuracy and tolerance limits would continue to apply. As the error rates and tolerances are likely to remain unachievable, wholesale CPs could be expected to continue to focus on minimising the number of breaches occurring rather than achieving compliance with all aspects of the Direction.

Impact on approval bodies

3.136 ABs would continue to audit CPs' compliance under the current requirements of the Direction. As with large businesses, the same issues would apply with ABs having to work round the error rates and tolerances and apply interpretative compliance solutions to non-compliant systems.

Option 4.2: Maintaining the scope and modifying the requirements

3.137 Under this option, wholesale services would remain under the Direction but the tolerance and accuracy limits set out in Annex B of the Direction would not be applied. This would essentially leave requirements on CPs to report billing errors and refunds in respect of wholesale services to the ABs. The ABs would then focus on ensuring appropriate processes are in place to ensure accuracy of information and on understanding what is driving billing errors/refunds in order to seek reductions in errors over time.

Impact on consumers

3.138 The impact of this option could be expected to be similar to that of option 4.1. As wholesale CPs cannot easily meet the tolerances and accuracy limits and those limits are often applied, in practice option 4.2 should provide a similar level of protection as that existing currently.

Impact on communication providers

- 3.139 Under this option, wholesale services would remain under the Direction, but no longer subject to requirements that were disregarded, CPs would have to adapt their systems to achieve compliance with any modified requirements for reducing billing errors in conjunction with ABs.
- 3.140 For retail CPs receiving wholesale services billing accuracy would be focused on the identification of billing errors and resolution of such errors.

Impact on approval bodies

- 3.141 Under this option, the ABs would not have to try to apply tolerances and accuracy limits that have been shown to be impractical, indeed impossible to meet and therefore meaningless. Instead the ABs would be able to focus on ensuring appropriate processes are in place and on understanding what is driving billing errors/refunds in order to seek reductions in errors over time.

Option 4.3: Reducing the scope

- 3.142 Under this option wholesale services would be removed from the Direction entirely.

Impact on consumers

- 3.143 As with options 4.1 and 4.2, any impact on consumers is likely to be small as their retail CP would be covered by the requirements of the Direction (if the CP has a relevant turnover over £40million a year) and by the requirements of GC11.1. Both sets of requirements should assure the accuracy of their bills for voice services.
- 3.144 However, we acknowledge the concerns raised about the importance of accuracy of information relating to wholesale services provided to retail CPs. The evidence we have gathered suggests that retail CPs are able to adequately verify whether their bills are based on accurate information being provided to them by wholesale CPs. This is because, as explained above, they have the ability to monitor incorrect billing, particularly through contractual terms which include service level agreements and penalties/remedies, and they also have the possibility of raising disputes with Ofcom. We invite views as to whether this is the case.

Impact on communication providers

- 3.145 CPs providing wholesale services would not have to comply with the requirements of the Direction. Wholesale services are not covered by GC11.1 so retail CPs would rely on any contractual and service level agreements that they have in place to gain assurance over billing accuracy. We invite views as to whether retail CPs consider that these agreements do indeed provide them with this assurance.
- 3.146 We expect that the effect of such a removal would be to reduce the burden and compliance costs on wholesale supplying CPs. Again we invite views as to whether this is the case.

Impact on approval bodies

- 3.147 The ABs would no longer have a role in assessing the accuracy of the metering and billing of wholesale services.

Our proposal

- 3.148 It is clear that the issue of wholesale billing needs to be addressed as compliance with key provisions within the Direction is not currently achievable for wholesale services. On the basis of the arguments put forward by the ABs and CPs, it appears that, where breaches of the accuracy limits and tolerances occur they are disregarded. This means that those limits and tolerances do not add any protection for consumers. On this basis, we believe that option 4.1, maintaining the current scope and requirements for wholesale services, should not be adopted.
- 3.149 We also recognise the inclusion of wholesale services within the scope of the Direction appears anomalous given that such services do not fall within the scope of GC11.1 which relates to retail billing. CPs receiving wholesale services have the ability to monitor incorrect billing and have contractual terms, including specific service level agreements and penalties/remedies, in place to address errors without the protection of the Direction.
- 3.150 We have therefore considered whether the requirements should be modified (option 4.2) or whether wholesale services should be removed from the scope of the Direction altogether.
- 3.151 We consider that the case for removal altogether is more strongly made for wholesale services than for large businesses in particular in that the rest of GC11 does not apply to wholesale services and that retail CPs should have the incentive and ability to monitor bills from wholesale providers, even more effectively than large business consumers. Moreover, we consider it appropriate to remove regulation where the costs of complying with the regulation outweigh the benefits to consumers. CPs are also able to ask Ofcom to resolve regulatory disputes relating to the provision of network access and the terms on which it is provided.³⁷
- 3.152 We believe that the balance of argument favours removing wholesale services from the Direction. We note the concerns raised by one AB and two CPs regarding the removal of wholesale services from the scope of the Direction, particularly as concerns calls carried over more than one network. However, they did not provide evidence to support their assertions. We welcome views in particular on this point both from CPs providing wholesale services and CPs receiving wholesale services. It may for example be appropriate to include some guidance about the responsibility and expectations of both the CP providing wholesale services and the retail CP in respect of the wholesale services they receive (along the lines of the text set out currently in section A3.4.5 Interworking between Communications Providers).
- 3.153 On the basis of our analysis, we do not consider removing wholesale services from the Direction will have a detrimental effect for consumers as they will continue to be protected under the provisions of the Direction and GC11.1 for the services they receive from their retail provider.

³⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/dispute-resolution-guidelines/statement/guidelines.pdf>

Q 7 Do you agree with the proposal that wholesale services should be removed from the scope of the Direction? Please provide reasons for your views.

Q8 If wholesale services are removed from the Direction, to what extent should the relationship between retail and wholesale CPs be covered in the Direction?

Application of section 49 tests

3.154 We are proposing that the Direction should be modified in three ways:

- Services for businesses with a communications spend of over £50k per year should not be subject to the error rates and tolerances set in Annex B of the Direction;
- Wholesale services should be removed from the Direction;
- The voluntary measures in respect of data services should be reviewed and updated.

3.155 We are not, however, proposing the detail of the amendments to the Direction at this stage. We propose that these are best devised in further consultation with industry. We do not, therefore, include in this consultation notifications of the proposed amendments for the purposes of section 49A of the Act. We will consult on those in due course. In that context, our assessment so far is that the three proposed modifications meet the tests for modifying directions set out in section 49(2) for the reasons set out below. However, this is subject to further assessment once the detail of the proposed changes is further considered.

Objective justification

3.156 Our provisional view is that proposed modifications to the Direction are objectively justifiable for the following reasons:

- The error rates and tolerances that apply to large businesses are unworkable and are largely disregarded. It is therefore appropriate to remove regulation for an appropriately defined set of services that is not effective and provides no benefits to consumers.
- The evidence indicates that there are appropriate justifications for removing wholesale services from the scope of the Direction because retail CPs should have the incentive and ability to monitor the accuracy of the bills that they receive without the protection of the Direction. Furthermore, the inclusion of wholesale services within the scope of the Direction appears anomalous given that they do not fall within the scope of GC11.1.
- Given the developments in the market since 2008, there is a need for the voluntary provisions in respect of data services to be reviewed and updated to make sure that they retain the potential to be effective. Furthermore, given the relatively low adoption of the voluntary measures, we consider that it is appropriate to consider measures that give CPs greater incentives to adopt voluntary measures for the benefit of consumers.

Not unduly discriminatory

3.157 At this stage, Ofcom considers that the proposed modification to the Direction does not discriminate unduly against particular persons or against a particular description of persons because they will apply equally to those CPs to whom GC 11 applies and the basis for application has not changed. As regards consumers, the proposed modifications will introduce differences in the extent to which services to those consumers may be regulated (notably large businesses and wholesale consumers). However, as we have explained in section 3, we consider that there are objective justifications for distinguishing between those categories of consumers.

Proportionate

3.158 Our further provisional view is that the proposed modifications are proportionate to what they are intended to achieve because they address changes in the market and problems with the operation of the Direction that we have identified but retain protection for consumers where appropriate:

- Removing the error rates and tolerances for large businesses is a proportionate remedy for the difficulties in applying the Direction to those consumers. In particular, it will result in the removal of a set of requirements that have been disregarded in practice and are therefore redundant. However, the proposed modification does not go so far as removing such services from the scope of the Direction entirely. That protection remains necessary for the kinds of reasons that we have set out. The removal of those services from the scope of the Direction, in the absence of sufficient evidence that large businesses have attributes that make the protections of the Direction irrelevant, would be disproportionate.
- By contrast, the evidence that retail CPs should have the incentive and ability to monitor the accuracy of the bills and therefore do not need the protection of the Direction is stronger. As such, a decision to maintain the current scope of the Direction would risk being disproportionate since it would involve CPs remaining subject to the burdens of regulation in circumstances where no or only a limited benefit was accruing to consumers.
- The proposal to update the voluntary measures in respect of data services represents an appropriate way to ensure a more effective set of measures without imposing on CPs the additional burdens associated with being subject to a set of mandatory requirements in circumstances where the evidence of consumer harm is less clear cut.

Transparent

3.159 We believe that the proposed approach to modifying the Direction is transparent in relation to what it is intended to achieve because Ofcom is seeking responses on the proposed approach by way of this consultation. Furthermore, Ofcom will work with ABs and CPs on the detailed changes to the text of the Direction as appropriate following consultation. Those changes will also be subject to consultation.

Annex 1

Responding to this consultation

How to respond

- A1.1 We invite written views and comments on the issues raised in this document, to be made **by 5pm on 25 April 2013**.
- A1.2 We strongly prefer to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/metering-billing-2013/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email mb@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Stephen Green
Floor 2
Content, Consumer and External Affairs
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3333
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Stephen Green on 020 7981 3761.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom will consider any detailed changes to the Direction that may be necessary as a result of responses it receives and those changes will be subject to further consultation.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 We seek to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 We have published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation Questions

A4.1 We invite stakeholders to respond to any of the questions set out in this consultation as listed below:

Question 1: Do you agree that the Direction should continue to apply fixed and mobile voice services (aside from wholesale services and services for large business) and that its requirements should remain unchanged? Please provide reasons to support your response.

Question 2: Do you agree that encouraging, but not mandating, the inclusion of data services in the Scheme represents the best way of protecting the users of those services from inaccurate billing?

Question 3: Do you agree that the provisions on data billing in Annex D of the Direction should be reviewed and updated? Please identify any issues that you believe the review should consider.

Question 4: Do you agree that the scope of the scheme should continue to apply to large businesses? Please provide evidence for your views in particular providing evidence on whether large businesses are able to and do monitor their bills more effectively than other consumers?

Question 5: Do you agree that with the proposal that error rates and tolerances set in the Direction should not apply in respect of business? What requirements should apply in the absence of error rates and tolerances, if any?

Question 6: Do you agree with the suggested definition of a large business as having a communication spend in excess of £50K? Please provide reasons and any evidence for any response.

Question 7: Do you agree with the proposal that wholesale services should be removed from the scope of the Direction? Please provide reasons for your views.

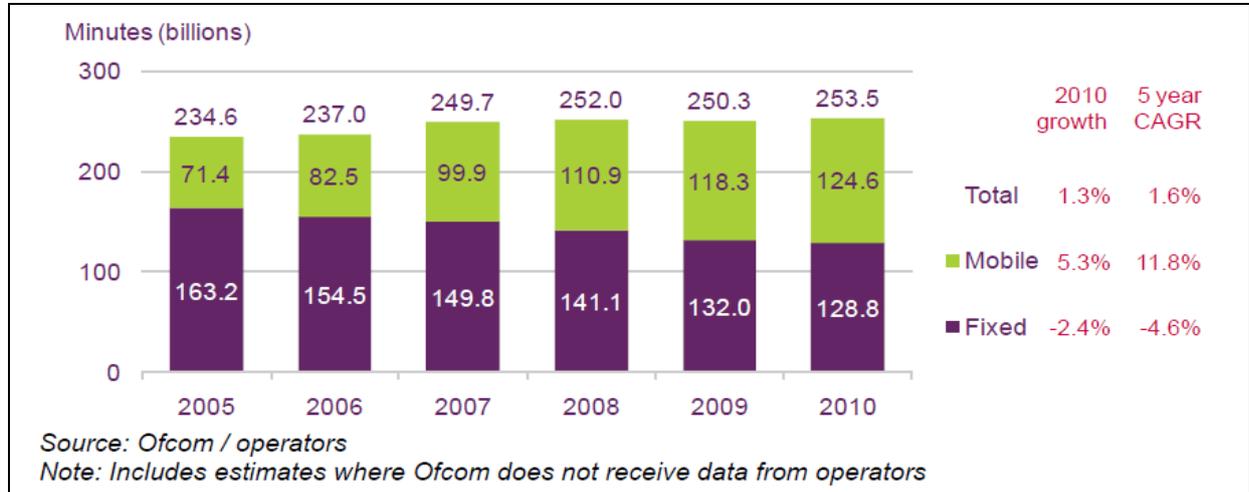
Question 8: If wholesale services are removed from the Direction, to what extent should the relationship between retail and wholesale CPs be covered in the Direction?

Question 9: Do you have any further observations or evidence on the Metering and Billing Direction?

Annex 5

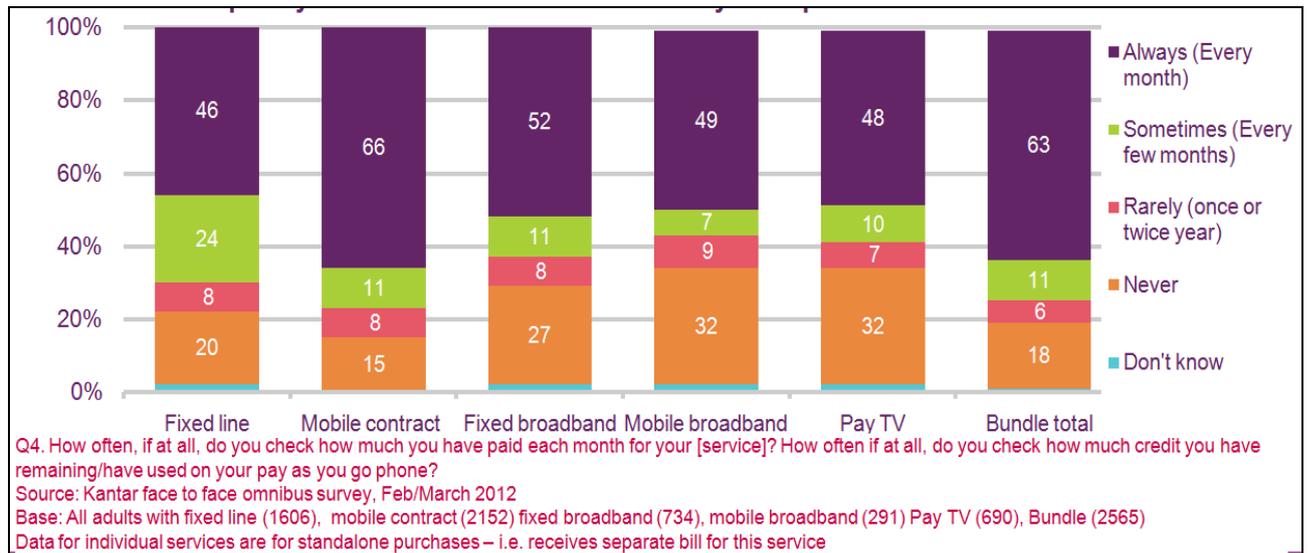
Supporting Evidence

Figure 1.1 Total Voice Volumes



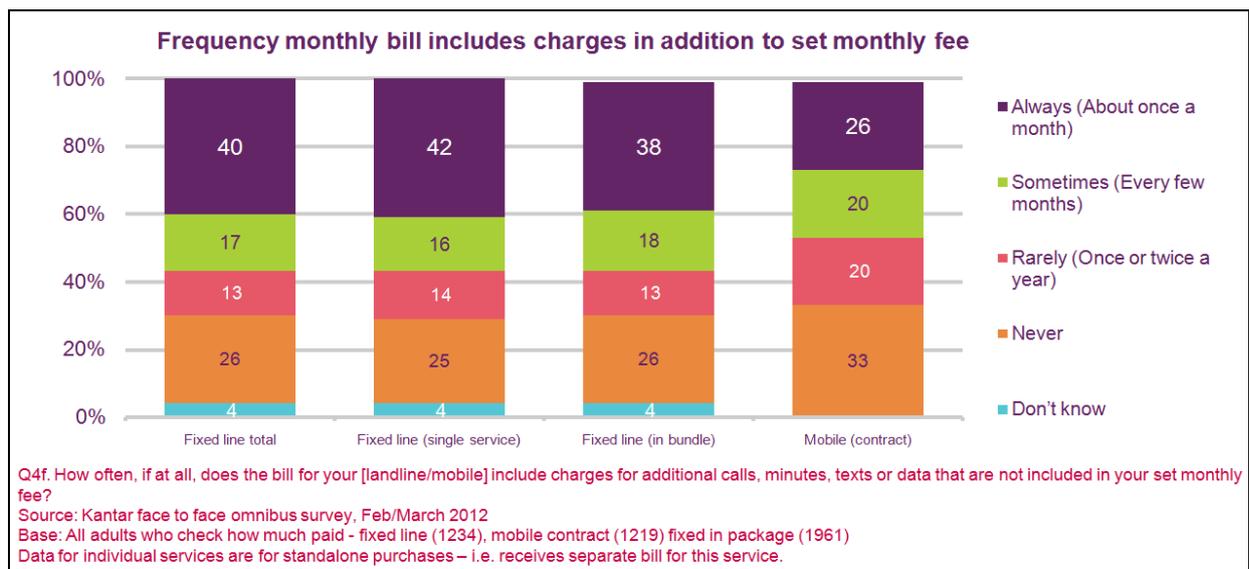
Source: Ofcom Consumer Market Research 2011, Figure 5.35 Total Voice Volumes p 281

Figure 1.2 Frequency consumers check how much they have paid for their service



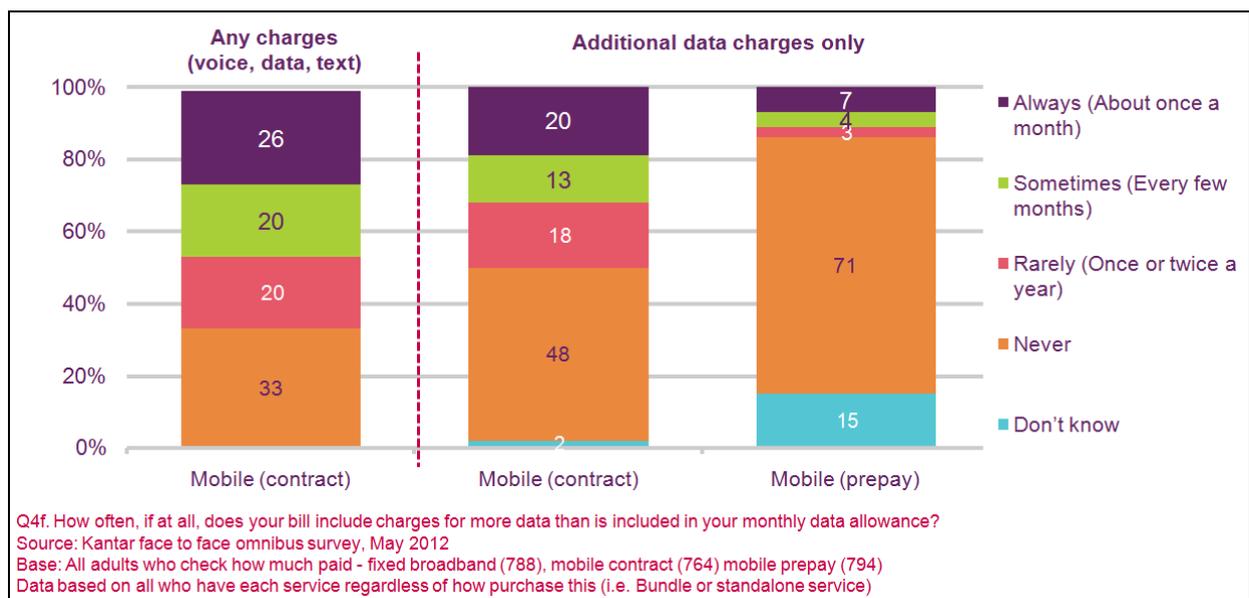
Source: Ofcom Omnibus Consumer Research Feb/March and May 2012

Figure 1.3 Frequency bill includes charges in addition to monthly usage allowance



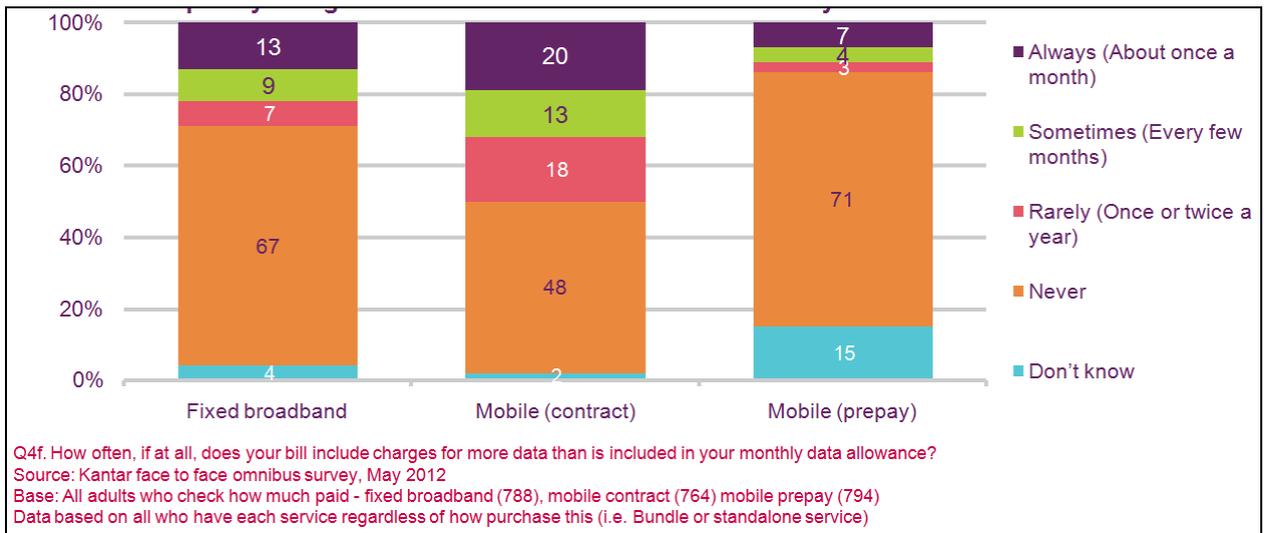
Source: Ofcom Omnibus Consumer Research Feb/March and May 2012

Figure 1.4 Frequency incur additional charges above monthly subscription



Source: Ofcom Omnibus Consumer Research Feb/March and May 2012

Figure 1.5 Frequency charged for more data than included in monthly data allowance



Source: Ofcom Omnibus Consumer Research Feb/March and May 2012

Figure 1.6 CISAS Billing Complaints data Q1 2011 to Q3 2012

