

Review of the Metering and Billing Direction

The application of the Relevant Turnover threshold under General Condition 11 to providers of wholesale services

Response by KCOM

23 June 2014

In our response to Ofcom's February 2014 consultation on the review of the Metering and Billing Direction, KCOM raised a point of clarification with regard to the calculation of the £40million Relevant Turnover which is a threshold for determining whether a CP must obtain approval of its metering and billing system. We welcome Ofcom's decision to consult further on this issue.

Our initial concern was in relation to what we saw as an inconsistency between the wording within the main body of the draft Direction and Annex C of the draft Direction, given that Retail and Wholesale have been explicitly identified as separate elements within the draft Direction. In paragraph 3.1 of the Direction it states that "A CP is required to comply with this Direction if its Relevant Turnover for **each** mandatory service (as outlined in the Annexes) is more than £40,000,000 (exclusive of VAT and other taxes directly related to turnover)." However, in Annex C, paragraph 2.1, it states that "A CP providing Wholesale services shall apply for Approval of its TMBS when the relevant turnover from PATS exceeds £40,000,000 per annum (exclusive of VAT and other taxes directly related to turnover)."

Ofcom has now identified a further issue in that paragraph A3.3.1 of the current 2008 Direction requires CPs to comply with the Direction "if its Relevant Turnover from End-Users contracted for each mandatory service (as outlined in the Annexes), is more than £40,000,000 on an annual basis (exclusive of VAT and other taxes directly related to turnover)". Effectively wholesale services are not included for the purposes of calculating Relevant Turnover.

Ofcom is of the view that if wholesale services are mandatory then they must be included in the calculation of the £40m threshold. We do not dispute that wholesale services are mandatory, but we do not think it is appropriate to consider combined retail and wholesale turnover when determining whether the £40m threshold has been met.

An alternative approach, not discussed in the consultation, would be to make retail and wholesale services separately subject to the £40m relevant turnover threshold. Indeed that would be consistent with the wording of paragraph A3.3.1 of the 2008 Direction and paragraph 3.1 of the proposed Direction in that both require compliance if Relevant Turnover "...for **each** mandatory service (as outlined in the Annexes) is more than £40,000,000...".



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By way of example, we think it would be odd for a CP with £41m retail Relevant Turnover and £3m wholesale Relevant Turnover to find both retail and wholesale services subject to the requirements.

An alternative approach would be to define Relevant Turnover for wholesale services in a different way to how it is defined for retail services. This is linked to the point we have made previously as to whether the Direction covers services provided to all resellers or only those provided to resellers who themselves are required to gain approval of their TMBS. A possible solution would be to only include turnover from wholesale services provided to CPs with TMBS approval within the calculation of Relevant Turnover.

The Direction and GC11.3 is ultimately about the protection of end-users, particularly consumers. KCOM does not dispute that wholesale revenues should be considered when calculating "Relevant Turnover" for the purposes of approval but we do think there is an issue to be resolved concerning the appropriate level of Relevant Turnover and potentially how Relevant Turnover for wholesale services is defined.



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