



General policy on information gathering

Consultation Response by Colt Technology Services

About Colt

Colt provides world class network, voice and data centre services to thousands of businesses around the world, allowing them to focus on delivering their business goals instead of the underlying infrastructure. Customers include 18 of the top 25 bank and diversified financial groups and 19 out of the top 25 companies in both global media and telecoms industries (Forbes 2000 list, 2014). In addition, Colt works with over 50 exchange venues and 13 European central banks.

Colt operates across Europe, Asia and North America. It recently completed the acquisition of KVH, an integrated managed communications and IT infrastructure services business, with headquarters in Tokyo and operations in Hong Kong, Seoul and Singapore.

Today Colt's network directly connects 207 cities, with a further 49 Metropolitan Area Networks (MANs) and direct fibre connections into more than 22,500 buildings. Also, Colt operates 29 carrier-neutral data centres in Europe and in Asia-Pacific region. Our Global network spans three continents with Colt-owned infrastructure in 28 countries. This allows us to provide services to our customers across 86 countries.

Colt has a wide portfolio of network, voice and data centre services which are delivered with industry leading customer service and security:

- Our network services offer, among others, managed network Services, bandwidth and Ethernet services, fibre infrastructure and wavelength services;
- Voice services comprise Enterprise voice services (such as PSTN and SIP trunking access and outbound calls) as well as wholesale voice services (world-wide call termination via TDM and VoIP interconnection service, Reseller solutions and tools, White Labelled Services and Number Hosting);
- Data centre services enable Colt to provide colocation in carrier-neutral data centres, remote hands' services, disaster recovery space and DC Connect (direct connections to any enterprise within a data centre – including carriers, internet and cloud service providers, internet and financial exchanges, and content providers or distributors)
- Also Colt delivers integrated solutions services using our strong capabilities to integrate products and services and provide solutions to enterprises across the globe.

Consultation response

Colt welcomes the opportunity to respond to the consultation on Ofcom's general policy for information gathering. Indeed, as is the case across CPs, Colt is deeply involved in the process of both complying to respond to Ofcom's mandatory information requests and to provide Ofcom information on a more informal basis (for example through market review call for inputs and consultations responses). However, Colt considers the consultation fails to set out the reasons that are driving Ofcom to revise the Statement. Indeed there is not clear reason expressed by Ofcom, other than them believing it is now appropriate as the current iteration of the Statement is 10 years old. Therefore, until those reasons are clearly described, together with a cost benefit analysis, Ofcom should put their proposals on hold.

Firstly, there is no analysis available from Ofcom demonstrating that there is a problem with the current policy, nor is there any evidence presented showing the proposals would in fact deliver tangible benefits. Secondly, from Colt's perspective, we do see evidence of problems with the current framework (these being expressed later in this response), although as yet we do not consider that Ofcom have anticipated these. On the contrary, we strongly believe Ofcom's approach will undoubtedly increase the burden currently carried by CPs due to the increased workload from Ofcom while on the other hand decreasing the amount of work Ofcom devote themselves to information requests. To conclude we are of the opinion that, if adopted, Ofcom's proposals would prove disproportionately burdensome to relatively small CPs such as Colt who currently struggle with resource constraints when responding to requests. Whereas, as a regulator, Ofcom's role should be to adequately oversee the market in the most effective manner.

We develop our underlying reasoning in the following sections by describing, on the one hand, our concerns with Ofcom's proposals and, on the other hand, what measures that should be considered to make a concrete improvement.

Ofcom's proposals

Ofcom's two main proposals present a concern to Colt as they as they are likely to introduce increased disproportionate burdens without appearing to bring any obvious benefit to the industry. We outline our concerns in the two paragraphs that follow.

Ofcom to assess on a case by case basis whether to send a draft request

Ofcom's current practise of sending draft S.135s has always been a positive aspect of the current policy because it enables CPs to proactively and constructively engage with Ofcom in order to better define what is required or what is actually not feasible or available for provision to Ofcom. This

current initiative is actually the most important part of Ofcom's approach to information gathering: not only in terms of better informing Ofcom but equally important as it helps CPs to:

- identify the right people that can help in the organisation to gather the required information,
- communicate within the organisation transparently, as affected individuals:
 - will know in advance that an information request is coming and can re-prioritise their work in order to fulfil the request;
 - will understand better the purpose and can therefore advise on the appropriateness of the questions being asked (ie if Ofcom should reformulate some parts of the request and/or consider other ways of getting the required information);
 - will be best placed to advise on whether the timescales for provision of the required information are feasible.

All of this establishes a collaborative dialogue between Ofcom and the CP (both on the regulatory and business side). This makes a difference as it helps the business consider Ofcom's requests as a result of a discussion instead of just as an obligation CPs have to comply with.

A good example of this is the preparatory work that Ofcom undertook before issuing S.135s for the Business Connectivity Market Review (BCMR) in early 2014. Indeed, given the importance of this market review, before issuing the formal information request, Ofcom issued a request several months in advance to CPs asking for their assessment of the feasibility of provision of the information and asking for provision of sampled data, where appropriate. This work was effective as we were able to identify alternative approaches, and, then the subsequent formal information request was modified accordingly. Also and most importantly, when the information request was issued formally, the data gathering was more efficient than it would have been otherwise.

Consequently Colt considers draft requests result not only in reducing the burden on CPs, they also enhance the quality of the approach. Therefore, for the reasons outlined above, we strongly believe this provision should remain unless the request deals with enforcement and dispute resolutions matters. We do not see any benefit in changing this aspect of the current approach.

New obligation on CPs to confirm completeness and accuracy for information provided to Ofcom on a voluntary basis

Colt thinks the use of voluntary provision of information to Ofcom is a good approach. Colt sees this as an opportunity to express views and/or provide further insight that would not otherwise be addressed by mandatory information requests. As a result, we believe this can help Ofcom see nuances that would otherwise not be visible when only relying on statutory requests. Indeed Ofcom's requests are quite rigid (both in terms of format and content) and this influences the way in

which CPs reply. Therefore it can sometimes be difficult to share different types of qualitative information.

However, we do not believe it would be appropriate for Ofcom to use their statutory powers to require CPs to confirm the completeness and accuracy of that information for several reasons:

- The level of granularity provided as part of those exchanges can be quite high and it would therefore not be justifiable for Ofcom to use their statutory powers for this purpose. It would increase the extent of information under which Ofcom would be able to use their statutory powers and we do not believe that this is either appropriate or justifiable. Indeed we are already concerned about the level of information Ofcom is able to require under the current approach and hence, we do not consider this should be broadened.
- Finding ways for CPs to confirm accuracy and/or ensure completeness of information would undoubtedly result in a higher compliance burden for CPs. If this were to happen regularly, it would deter CPs from providing information on a voluntary basis (even where they know the information is of value). We are therefore not in favour of this proposal.

To summarise, Colt believes informal requests have proven valuable in the past given. This is because they have allowed CPs to express alternative approaches to Ofcom. However, we believe using statutory information requests for this purpose would not be appropriate because they would increase the (already high) compliance burden on CPs and deter them from submitting information voluntarily that might otherwise increase Ofcom's understanding of the market.

Ways to improve the current policy

At the moment we think the current policy is broadly fit for purpose although some improvements could easily be made. In the current consultation Ofcom states the following: "Wherever possible, Ofcom will draw from existing information sources to avoid unnecessary duplication of effort and to minimise the burden placed on those from whom information is requested." and, in order to make this possible we believe the below suggestions would help:

1. **Allow comments on drafts.** Draft requests should remain and always be issued (except where relating to enforcement or dispute resolution).
2. **Accept provision of information based on CPs' standard reporting.** Ofcom should accept CPs' own formats of reports and consolidate the data themselves to complete standard templates (as this was done for the mandatory information request issued in 2014 as part of the BCMR). Ofcom would then ask CPs for a confirmation of any assumptions used when undertaking the consolidation. There is often a disparity in the categories and levels of granularity used in CPs' systems and the information requested by Ofcom. We consider that very little is gained (and a lot of accuracy may be lost) by requiring CPs to make estimates, simply to fit the categories specified

by Ofcom. We believe Ofcom can improve its understanding of the market significantly by starting with the information that is actually available, and using that as the basis for testing its assumptions and hypotheses.

3. **Increase timelines for the provision of information to Ofcom.** Currently, the timelines set by Ofcom tend to be very short. For instance, in terms of market review related information requests, Ofcom will vary the timeline ranging from a two week window to longer. And often, they can issue requests to suit their own schedule (ie before the holiday period) with really no recognition on the impact on CPs (resource and capabilities). In other European countries other regulators typically give longer timelines as they recognise the resourcing implications on CPs. Longer timelines should then be given than the ones currently in place. This applies to both formal and draft requests. For example, only three working days to comment on a draft is in our view not reasonable. As explained previously, this is the first but most important part of Ofcom information gathering approach, and, if Ofcom looking for meaningful comments, at least a week should be given for the right people to provide their comments. Furthermore, the window normally offered for statutory requests can also be very short (ie two weeks). Considering that up to 3 years of technical data is often required and that much of that data has to be provided in a format that requires a consolidation exercise to complete the relevant templates, such timescales are very difficult to adhere to without material disruption to business operations. Most companies operate archiving policies for such data. Extracting data from archives can be a significant task that can impact budgets and business critical projects. Given our experience of handling such requests, we consider that at least 6 weeks should be standard. Nonetheless, we recognise it is difficult to set standard timelines as they will really depend on the type of request issued (this is a reason why Ofcom should always allow CPs to comment on draft requests).
4. **Move to an email based approach.** The current approach where an email is sent to the last key contact within the CP as well as a letter to the company secretary is not optimal. The company secretary of international corporations such as Colt have little if any involvement in sector specific regulation in any one country and are very often surprised and confused by such requests (sometimes resulting in internal miscommunications that create additional burdens and delays). Indeed we believe an email-only approach should be adopted where a contact list (involving main and backup contacts) is maintained by Ofcom and circulated to CPs for confirmation on a periodic basis. This would avoid any potential delays in response from CPs.
5. **More efficient reliance on data already submitted.** Often, we see S.135s requesting data where almost identical data have already been submitted. We have the impression that some market review teams have taken an approach broadly characterised as “fire and forget”: firing off a S.135 as the first port of call when seeking information on a given topic, and then losing all knowledge gained by the process. We can see this at different levels:
 - Overlaps between regular reporting and market review requests. As recently as June 2015, Ofcom required confirmation of the valid provision of already submitted quarterly

fixed market reporting when looking at the information request in June relating to Ofcom's Fixed Call Origination and Termination Market Review 2016).

- Overlaps within the same market review teams. Indeed some requirements can really repeat themselves. For example, as part of the BCMR, Colt recently met with Ofcom regarding pricing. Some questions arose relating to dark fibre and were clearly the same as what had already been provided as part of a mandatory information request for which we had responded a few months before.
- Overlaps in timing between market review teams. For example when issuing a mandatory request, Ofcom have no recognition that there are other regulatory demands already on CPs.

To avoid this, we recommend that Ofcom to checks what it already has from regulatory reporting and considers whether some duplications could be prevented. This way Ofcom could explicitly state the information required is not already available to them and the request would therefore be better understood by CPs.

The above approach is therefore not sustainable for CPs, particularly, smaller ones.

Consequently:

- better co-ordination is required across the Ofcom departments together with a clear plan for when potential information requests are intended to be issued so that CPs have the opportunity to plan this into their workload.
- if qualitative data and views on different approaches are needed, we think it would be better if Ofcom could organise a meeting before even issuing the information request and not the other way around. Indeed we think this would avoid duplication and generate more involvement and a better appreciation of the issues by the people in charge of delivering the actual data within our organisation.

6. Improve clarity on the appropriateness of level of information required by Ofcom. Currently, in most of Ofcom's information requests, it is not clear whether and why the granularity on the data requested is needed. Often, we receive S.135 requests, specifying a level of granularity that in our view is significantly in excess of the purpose for which the data is being collected. We would recommend that, particularly when using its statutory powers to collect information, Ofcom provides an explanation for the level of detail that is sought. Furthermore, we generally believe that under current practice, the overall extent of information requested by Ofcom is already questionable and Ofcom's statutory powers should not be extended to more (as suggested). There should indeed be a clear difference expressed by Ofcom between the basic information required for them to assess the market and additional information, which should remain as voluntary provision by a CP. We would argue for a clear boundary between the basic information required (justified as such by Ofcom) and additional information provided, which should remain on a voluntary basis (and not confirmed nor completed under Ofcom's statutory powers).

To conclude, before proceeding any further we would urge Ofcom to first clearly set out what failures (rather than perceived failures) they are attempting to address. Then, in the event there is an evidence of failure, Ofcom should prepare an argument that the benefits of any change in approach exceed the costs. In doing this we would recommend Ofcom explicitly:

- recognises the heavy burdens information requests place on respondents (especially for smaller players),
- is mindful of any proposals that would increase this,
- considers approaches (such as those suggested above) that would lessen the burden while maintaining the same quality of information gathered.

Finally, Ofcom should note that Colt has read UKCTA's response to the present consultation and that we fully support it.