

Dear xxxx,

I hope you are well?

I participated in a call today with Gareth Stevens and Jonathan Levack at the PSA and Dynamic Mobile Billing Limited. It was one of their regular, quarterly meetings to review industry and compliance matters. We were discussing the likely ways of working post the implementation of the Statutory Instrument and Jonathan suggested that I follow up with you on two particular areas. I know that both of these have been raised in part with you via consultation responses but never the less they thought there was merit in contacting you specifically.

1. Firstly, the issue of risk assessment and in particular creating a specific obligation on the parties to consider the nature and format of the controlled PRS as part of the obligations of Article 17.

I raised this matter with you in the industry wide meeting with AIMM and drew your attention to Article 17(2) which sets out the criterion that the parties must give regard to in undertaking the risk assessment. The matters referenced in 17(2)(a) and (b) particularly pertain to the corporate arrangement and the parties themselves. There is no express consideration required in relation to the controlled PRS itself.

The inclusion of a phrase such as '(c) the nature, configuration and format of the controlled PRS', would in my view suffice. This additional provision would benefit the industry in providing a substantive term which could be relied on when new services are proposed that, on the face of it are compliant but that an intermediary/MNO may consider to be too risky to accept.

The industry does risk assess proposed service formats and will continue to do so but the statutory instrument would better support the supply chain if there was an express provision that providers could enforce to justify the rejection of a service format based on its risk at the outset. The risk relating to the service format may well be entirely independent of the risk of the parties, the corporate entities or their contractual relationships.

2. The second matter is to ask whether there is yet any clarity on how OFCOM will work with providers under the new regime. Whilst the PSA have moved away from industry wide meetings they have continued to meet with the material service providers on a quarterly basis. This has, in my view, proved to be very valuable. It is an efficient and effective way to obtain detailed information and understanding across the supply chain and with the regulator and I am sure is an effective and affordable approach to regulation and consumer protection. It also provides the opportunity to discuss industry trends and development. In addition the industry have the benefit of the ILP with the PSA. Will this continue? Or something similar?

Finally, at the stage when a service is investigated by OFCOM will the service provider typically be provided with the opportunity to work with OFCOM to mitigate and remove any perceived/actual consumer harm prior to formal enforcement action? Currently the quarterly meetings and PSA enforcement process provides notice of pending issues which facilitates their resolution.

Again, I understand that you are continuing to develop the processes post SI implementation but if it would be useful to discuss these points please do not hesitate to contact me.

Many thanks for your consideration,

Regards

Strategic Brief