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### **Three Response to Ofcom's Call for Inputs on Automatic Compensation**

Dear Steve,

1. This is Three's (Hutchison 3G UK Limited) response to Ofcom's Call for Inputs on automatic compensation. As noted in Ofcom's Digital Communications Review, this will be a key and developing workstream; as such we welcome this early engagement and the opportunity to inform Ofcom's approach.
2. Three is the UK's challenger mobile operator. Since we launched in 2003 we have focused on making mobile better for consumers. This includes ensuring that our customers are able to make the most of their mobile services through market-leading and innovative propositions, including all-you-can-eat data and 4G at-no-extra-cost. Through Feel at Home, Three customers can call, text and use their data abroad in 18 destinations, using the same allowances they do at home as standard.
3. Three recognises the importance of delivering what Ofcom identifies as 'service quality' to consumers in its broadest possible sense. We have strived for this in how we manage our network and how we continue to support our customers. We currently have the highest customer satisfaction of any network according to YouGov, and we have consistently achieved our target of resolving at least 80% of customers' enquiries at the first point of contact.
4. When service does fall short of what customers are promised or reasonably expect, it is right that they have appropriate and proportionate means of redress. However it must also be ensured that any new regulation is flexible enough to ensure that operators can continue to provide the redress that best suits an individual customer's situation.
5. Ofcom expects that this measure will drive higher standards in the communications sector. However for this to be achieved, reform is needed to ensure that the right regulatory environment is in place to support this.

#### Why mobile matters to consumers?

6. As Ofcom noted in its 2015 Communications Markets Report, the UK is now a 'smartphone' society. Mobile is increasingly seen as an essential service for consumers and businesses across the UK. Nine-in-ten adults now own a mobile phone,<sup>1</sup> with eight-in-ten SMEs describing connectivity as

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<sup>1</sup> Ofcom Facts and Figures, 2015, <http://media.ofcom.org.uk/facts/>

'fundamental' to their businesses.<sup>2</sup> Recent Ofcom research has found over a third of adults (34%) check their mobile device within five minutes of waking up every morning.<sup>3</sup>

7. As mobile is now a crucial part of everyday life, it is important that when things do go wrong, consumers have means to appropriate and timely redress. Three has worked hard to ensure that we are responsive to our customers with the aim of finding fair and reasonable resolution to the customer's complaint. We are proud that Ofcom has found Three to be the least or joint least complained about Mobile Network Operator for the past 8 quarters.<sup>4</sup>
8. However, there will always be occasions where we are unable to resolve a complaint directly with a customer. Therefore, it is right that the customer has other alternatives if they believe a provider has not dealt with their complaint satisfactorily. Existing regulations and consumer protection legislation, recently strengthened through the introduction of the Consumer Rights Act 2015, are effective in providing this alternative. The Ofcom Approved Code of Practice for Complaints Handling also requires communication providers to ensure the fair and timely resolution of complaints and facilitate appropriate access to Alternative Dispute Resolution. The Ombudsman model is understood and widely recognised by consumers and offers impartiality, objectivity and confidence in the decision making process.
9. However, we do also acknowledge the appeal of automatic compensation models. Empowered and informed consumers are essential to hold service providers to account for poor services. A potential automatic model might help this, and may be appropriate in some sectors. However, in a sector which is as complex as mobile and in which there are significant variables, many outside the control of service providers, which may impact service quality, a superficially attractive automatic compensation regime is unlikely to be appropriate.
10. Three is concerned at how such a scheme could be implemented for the mobile sector. In mobile there are many technical and definitional difficulties intrinsic to how networks operate and how our services are used that would make this extremely challenging to implement in a way that reflects a customer's experience.
11. By way of example, in fixed broadband it is easy to define whether a service is or is not being delivered to a particular premise. However, in mobile, consumers make use of services in multiple locations, for their work, their leisure or their commute, making it harder to identify who was affected by a certain fault. Some of these challenges are set out in further detail under paragraph 30.
12. If Ofcom does progress measures in this area, we believe there are a number of key issues that Ofcom must address when formulating its approach to automatic compensation:
  - First, Ofcom needs to address what matters to consumers when assessing it's criteria for 'service quality', placing a particular emphasis on reliability.
  - With the importance of reliability in mind Ofcom must also work with Government to tackle a number of key obstacles to better services, in order to ensure that operators have the full range of tools necessary to deliver their services. Taking such an approach will be key to ensuring not just effective redress for service issues but fewer issues in the first place.

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<sup>2</sup> Ofcom, Broadband for SMEs, 2015 <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/sme/bb-for-smes.pdf>

<sup>3</sup> Ofcom, Communications Markets Report, 2015, [http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/CMR\\_UK\\_2015.pdf](http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/CMR_UK_2015.pdf)

<sup>4</sup> Ofcom, Telecoms and Pay TV Complaints, Q1 (January to March) 2016, [http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/complaints/Q1\\_2016.pdf](http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/complaints/Q1_2016.pdf)

- Ofcom must also consider the importance of fault and liability. Many service faults are a consequence of poor delivery in the wholesale transmission market. Three believes that Mobile Network Operators should not be responsible for such faults. However, demonstrating appropriate blame and responsibility will be time consuming and costly. The “blame go round” that characterises complaint processes in the rail industry should not be a model.
  - Finally Ofcom should consider the scope of any automatic compensation scheme, with an awareness of the distinct characteristics of fixed and mobile technologies, ensuring that its approach properly recognises the experience of the end user, and that any approach should be as flexible as possible.
13. Each of these is addressed in turn in the main body of our response below. Answers to the specific questions raised by Ofcom are also included as an Annex.

#### **1) What does service quality mean for consumers?**

14. The first step for Ofcom in identifying the scope of an automatic compensation scheme must be to assess what consumers value with regard to quality of service. Ofcom will need to work with industry to understand what current barriers prevent them offering this on a consistent basis. This will be crucial, ensuring that operators have the full range of tools at their disposal to deliver the services consumers expect, not just to compensate them when they fall short.
15. As the least complained about network,<sup>5</sup> Three has valuable insight into what consumers value from their mobile provider. We have focused on becoming the most *reliable* network – as opposed to the fastest or the cheapest. This is grounded in consumer research. Enders Analysis in 2014 found that 47% of consumers identified reliability as the most important thing to them when choosing a mobile service, well ahead of coverage (36%) and data speeds (9%).<sup>6</sup> We note that in recent years, complaints have increasingly been on the quality and availability of a connection, rather than other issues such as billing or customer service. This enables customers to get the best out of their mobile devices, as well as a level of support which they can rely upon when the network doesn’t meet their expectations.
16. Therefore, we believe that Ofcom should place reliability at the heart of its quality of service work. This will not just address how an operator compensates a customer for loss of service; it will improve our ability to resolve the issue – and reduce the likelihood of such problems arising in the first place.

#### **2) What steps can Ofcom take to deliver reliability?**

17. The fact that the reliability of mobile services drives so much consumer dissatisfaction and so many complaints demonstrates the challenging nature of delivering mobile services. The distributed nature of mobile networks mean that key infrastructure - especially in rural and remote locations – is inevitably at risk from fault and damage. The causes can be as diverse as vandalism, extreme weather and third party dependencies such as transmission, and power outages and site access.
18. The overriding priority must be to ensure resilient and reliable networks, so that there are fewer outages to contend with and that services are restored as quickly as possible. However operators have found maintaining and repairing their networks far more difficult than it should be, in no small part as a result of the failing regulatory framework in this area. Reform is now being brought forward by Government and Ofcom, however the pace of this has been too slow.

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<sup>5</sup> Ibid.

<sup>6</sup> Enders Analysis/TNS RI-Survey, May 2014

19. We identify two key areas below where change is needed to benefit mobile consumers; site access, and quality of third-party transmission services.

*2a) Site Access*

20. When service quality is diminished, it is important that the harm to the consumers is addressed – often in the form of compensatory gestures – but the overriding expectation from customers is not suitable redress but that the issue is resolved as quickly as possible.
21. A YouGov poll in 2014 found that 79% of people expect network outages to be repaired within four hours. Yet on average it currently takes more than 48 hours to access sites, and can sometimes take as long as 10 days. This is often due to problems gaining access to sites. Around 15% of all our weekly repairs are cancelled as a consequence of access disputes. Even in cases where a site is still operational, essential upgrades, such as the rollout of 4G mobile services, have been frequently delayed as a result of such disputes.
22. Reform of the Electronic Communications Code, which if effective will improve access rights, was a key component of the 90% Coverage Agreement that Ofcom is responsible for monitoring. Government have been very slow in bringing forward this reform; its delivery on this through the Digital Economy Bill will be a key step in ensuring that service is restored quickly and effectively.

*2b) Transmission*

23. One of the blockages to a reliable, high capacity service can be the role of third parties. Operators depend upon a number of them to deliver quality services, including Wholesale Infrastructure Providers such as Arqiva and electricity suppliers. However the service that currently has the most significant impact on service quality remains transmission. These leased lines, that connect our sites across the UK to our core network and the wider internet, are fundamental to delivering quality services; as well as carrying data across the network, they are key in determining the capacity and speed the end user receives.
24. However in many cases these transmission services are falling short. At any given point in time around 5% of our sites are congested; and specifically 3.7% of our sites are congested as a result of transmission capacity insufficient to meet demand. To deliver quality services operators need access to fibre transmission at a competitive price, however the uncompetitive nature of the backhaul market means we often have to settle for less. BT is the dominant provider in this market, with competition in only one in five postcodes, largely concentrated in urban areas. This lack of competition, innovation and choice in this key market is a significant impediment to operators' ability to offer a genuine quality service.
25. Delivering improved competition in this market will be vital in improving service quality not just to operators but to end users. This is particularly the case where outages occur. The effect of outages tend to be most severe in rural areas, as typically there is only one site serving a given area. While it is ultimately the responsibility of the service provider to find a resolution for the customer, the absence of competition in backhaul too often leaves BT - as the dominant provider - unaccountable for a network that poorly serves both fixed and mobile customers in many parts of the country.
26. It is essential that Ofcom assesses how BT might be made more accountable to enable better quality of service. Ducts and fibre access are steps towards this. However, more generally Ofcom will need to be bold and more ambitious, addressing not just the relationship between the communications provider and the end user, but also the communications provider's wholesale relationships that underpin service quality in many instances.

### 3) What are the best means of redress when things go wrong?

27. Even with an enhanced competitive and regulatory framework, the nature of mobile is such that faults and outages will always occur. Three agrees that it is important that customers have redress in such circumstances. There is already a framework to do this, which allows operators to offer customers the redress that best suits their needs. However, it should be noted that the current switching regime makes it difficult for customers to vote with their feet when a service does not meet their expectation or need.
28. Below we have set out the current framework of redress but also how reform to the switching framework will further empower consumers, as well as the form that any potential compensation might eventually take.

#### 3a) *How operators handle complaints.*

29. Given the nature of mobile technology outlined in paragraphs 10 and 11, it is right that mobile operators be able to judge the case for refunds and goodwill gestures on a case by case basis. Individual customer's experience of our network varies dramatically based on factors as wide ranging as what they use their device for, where, and what alternatives they might be able to make use of – for example WiFi calling and texting through our free Three InTouch app.
30. When designing any compensation scheme there must be some recognition that unlike fixed broadband at a residential or commercial premises, where it is simple to determine whether a service is being delivered, the nature of a mobile service is such that a customer may well be able to make use of their package, even when a cell site providing service at a key location such as their home address is unable to provide service. This means there is no easy mechanism by which consumers can be refunded and this is why we currently consider such issues strictly on a case-by-case basis, based on usage.
31. There also needs to be recognition of the other alternative means of redress, such as ADR. Three enjoys a productive working relationship with Ombudsman Services: Communications. As a result of feedback we have streamlined our internal complaint handling processes to help ensure that we have done all we can to find a resolution before referring a deadlocked complaint to OS:C as the arbiter. As a result, only 2.19% of all telecommunications complaints received by the OS:C for adjudication are from Three customers.<sup>7</sup>
32. Key to this approach has been discretion and flexibility to find the right resolution for any particular customers' circumstances. This has important implications for the potential design of any automatic compensation scheme. If delivered too rigidly, this might mean the customer is unable to access the resolution they want. This might include any number of measures, such as a complementary femtocell, account credit, additional minutes, texts and data to their bundle, or in some cases the ability to exit their contract altogether. Even measures as simple as giving customers a choice between a cash refund and additional allowances gives the customer the ability to find the right resolution for them.
33. It is essential that operators continue to have the flexibility to support customers on a case by case basis precisely for these reasons. Collectively with recently passed consumer legislation, most notably the Consumer Rights Act 2015, this represents a robust framework to protect the rights of consumers to receive a quality service.

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<sup>7</sup> Complaints accepted by OS January-June 2016

*3b) Empowering consumers to switch.*

34. The ultimate ability for consumers to hold their service providers is their ability to vote with their feet; their ability to switch. Ofcom notes in its call for evidence notes that number porting is one area of service quality concern. We would share this concern; the current Losing Provider Led can create poor quality service.
35. Progress in delivering reform towards a Gaining Provider Led (GPL) process has been slow. The evidence base for GPL switching is well established and the consumer harms of Losing Provider Led switching are clear. Ofcom's most recent research into the consumer harms of switching, published in February 2016, found that more than half of those who had changed operators had difficulty with their existing provider trying to persuade them to stay, while 29% of those who 'considered' switching but didn't named the switching process itself as an issue.<sup>8</sup> Ofcom's own research shows that only 10% of mobile customers switched in 2015.<sup>9</sup>
36. The priority now must be to bring these changes forward, to minimise ongoing harm to consumers and ensure that they are empowered to hold their providers to account for poor service.

*3c) Ensuring flexibility to find the right resolution for the customer.*

37. Finally we would note that any scheme should be designed with the greatest possible flexibility in mind. Different resolutions are appropriate in different cases. It is important that any scheme that Ofcom designs is not overly restrictive on operators' ability to find the right outcome for a customer.
38. In terms of the form of compensation, it is our view that the emphasis must be on finding a suitable resolution. This might be use of alternative technologies such as an in-home femtocell to restore service, or encouraging a customer to make use of WiFi calling. Our own research has shown that customers using our Three InTouch app have a higher Net Promoter Score (NPS) of +24 compared to our main customer base, at +18. This measure, which subtracts the share of customers who would not recommend Three from those who would, reflects that finding a resolution for a customer should be the priority, and that no technological or compensatory means should be excluded as an option.
39. In practice this should mean that where operators wanted to offer customers a choice of monetary compensation, or other forms of compensation such as credit or additional minutes, that they should be free to do so. Short of mandating an automated compensation scheme that might be to the detriment of some consumers, Ofcom might instead seek to periodically validate communications providers compensation policies against the compensatory principles established as a result of this workstream. Doing so would protect customers while also giving them the flexibility to tailor this to particular customers' circumstances.
40. Doing so will also help negate some of the potential unintended consequences that Ofcom identifies in its Call for Inputs, for example around operators margins and the potential for higher prices for the wider consumer base. Taking a rigid and inflexible approach to any scheme would potentially risk either underserving customers, or providing customers who themselves believe they are receiving a satisfactory service with a refund they didn't ask for. This potentially diverts resource from investment in longer term service improvements and reliability.
41. This underlines as well the considerable cost and disruption that any automated compensation framework would likely entail. Any definitive estimate of the impact of such a change would require

<sup>8</sup> Ofcom, Mobile Switching Quantitative Research, February 2016, [http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/mobile-switching/mobile\\_switching\\_quantitative\\_research\\_feb16.pdf](http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/mobile-switching/mobile_switching_quantitative_research_feb16.pdf)

<sup>9</sup> Ofcom, Mobile switching research 2015: Focus on switchers, 2015.



a full audit of all the functions and business processes an automated compensation scheme would cut across, however it this Three's views that this would be wide-ranging. Many business critical systems would need to be redesigned altogether at considerable cost.

### **Conclusions**

42. We welcome Ofcom's focus on service quality. This is a critical area, and ensuring that consumers have access to fair and effective redress will be a key component of this emerging workstream for Ofcom. It will be essential that Ofcom recognises where this is already done effectively, as well as the limitations of any particular technology in delivering automatic compensation. The overriding objective for Ofcom to deliver service quality though must be to ensure reliability.
43. Not only is this is what consumers want and expect, it also remains firmly within Ofcom and Government's remit to deliver the key reforms needed to address this reliability challenge. If done successfully, then operators will have many of tools they need to deliver the quality services consumers expect and businesses need to operate effectively and competitively. This will ensure that operators are as able as possible to resolve customers' problems, not just compensate for them.
44. If Ofcom chooses to pursue change in this area further, what is needed is an approach that is flexible and sets out principles around which operators policies with regard to compensation the compensation of customers for loss of service could be framed, taking account of rights for customers in existing consumer protection legislation. This would enable operators to develop their own compensation policies, reflecting the needs and wants of their customers without providing for an automated regime that could lead to deleterious consumer outcomes.

I hope this response is informative for Ofcom's work in this area going forward. If you should have any questions on this or any other area, please do not hesitate to get in touch.

Yours sincerely,



Simon Miller  
Head of Government & Regulatory Engagement

## **Annex A - Answers to Specific Questions**

**Question 1:** What are your views on our initial thinking regarding the factors potentially relevant in determining:

- (a) scope, including possible eligibility;
- (b) form and process of compensation;
- (c) level of and basis for compensation; and
- (d) possible costs and risks of introducing automatic compensation?

Issues relating to question 1a) are addressed in paragraphs 10-11, 29 and 30 of the main response.

Issues related to question 1b) are addressed in paragraphs 37 to 41 of the main response.

Issues related to question 1c) are addressed in paragraphs 29-33 and 38-39 of the main response.

Issues related to question 1d) are addressed in paragraph 39-40 of the main response.

**Question 2:** Are there any additional considerations? Please explain the reasons for your answer and your views on their relative importance, providing any supporting evidence where available.

As explained in paragraphs 14-16 of the main response, Ofcom must place reliability as a key consideration in its approach to service quality. Ofcom must ensure that a number of key obstacles to reliability, set out in paragraphs 17-27, are addressed in order to enable operators to have the full range of tools to deliver reliable and high quality services to consumers.

**Question 3:** Do you agree with our initial views on the service quality issues that could matter most to consumers?

As noted in paragraphs 3-5 it is Three's views that Ofcom is right to focus on service quality. While the specific issues raised in the Call for Inputs are all relevant, an overriding focus on reliability, as discussed in paragraphs 14-16 of the main response will be key to Ofcom's understanding of service quality.

**Question 4:** Do you agree that some of the above issues may be more suitable for automatic compensation than others? Please explain the reasons for your answers, and provide any supporting evidence where available.

As explained in paragraphs 10, 11 and 30, Three acknowledges that an automatic compensation scheme may be attractive in sectors where the delivery of a service can be well defined, such as fixed broadband. However in mobile this will be considerably more challenging owing to the distributed nature of the technology and how our customers make use of services at multiple locations for different purposes. Ofcom should consider characteristics of any particular sector/market in order to determine its approach, but it is Three's view that the current process of determining compensation on a case by case basis remains the most fair and appropriate for consumers.

**Question 5:** Do you agree that we should consider the need for exceptions and dispute resolution?

Inevitably there will need to be exceptions, as noted in paragraphs 17 to 19, whereas Ofcom notes in its Call for Inputs there are factors simply beyond an operator's controls, such as those of force majeure. Dispute resolution will always be important, and we would note that this will be the case regardless of the operation of an automatic compensation scheme. As we noted in paragraphs 8, 31-33 this there is already a well-established process in mobile through OS:C.



**Question 6:** Do you think Ofcom should consider the relationship between retailers and suppliers and if so, how? Please explain the reasons for your answers, and provide any supporting evidence where available.

As set out in paragraphs 20-26, there are a number of issues that communications providers have with third parties and suppliers that need to be addressed to deliver more reliable, quality services. While there has been progress in this areas, we would particularly note the lack of competition to BT in the transmission market.