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Review of the Metering and Billing Direction

We would welcome any comments on the contents of this document which is also available electronically at <http://www.btplc.com/Thegroup/RegulatoryandPublicaffairs/Consultativeresponses/>

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EXECUTIVE SUMMARY

Introduction

The Metering and Billing Direction is there to help ensure that CPs' billing systems deliver accurate bills. There has been a Direction since 1993 and the current version has been in force since 2008, and as Ofcom implies, it has been problematic. So we are pleased that Ofcom has decided to review it.

We welcome some features of Ofcom's proposals. But we think that Ofcom should take the opportunity to **de-regulate further**, and, if it still feels that a Direction is needed, it should regulate in a less prescriptive manner.

We believe that alongside GC11.1 and the possibility of an investigation under it by Ofcom, **strong commercial drivers** incentivise accurate billing. A reputation for sending inaccurate bills would be damaging for a CP, leading to complaints, increased costs through failure and brand and PR damage.

We agree with Ofcom that there have been changes in the market since the Direction came into force. We believe as a result that Ofcom's evidence does not inexorably lead to the conclusions it has reached; to maintain but modify the requirements of the Direction. **Rather, it suggests to us that the Direction is no longer needed.**

Form of intervention

We believe that if Ofcom finds that there is still a need for a framework going beyond GC11.1, it should take the form of a voluntary scheme rather than a mandatory Direction: membership of a voluntary scheme would be a signal to customers and a commercial differentiator for CPs.

Whether voluntary or mandatory, any regime should:

- adopt a qualitative rather than quantitative approach, based on sound business-as-usual principles, practices and processes that are more meaningful to customers, such as system checks, pre-bill checks, a sound customer contact and complaint process and compliance/audit reviews of the billing activity;
- be focused on how billing processes work for customers rather than on exacting technical standards beyond those required, as far as we know, anywhere else in the world;
- be one that any CP could choose to sign up to, regardless of size; and
- be capable of being applied to any service, including for example data or pay TV, given the growth in triple and quad play packages.

Scope

In the event that Ofcom concludes that a Direction is still required, the focus should be on **retail voice services for consumers and smaller business customers**. We believe that other services and customer groups should be removed from the scope of the Direction for the reasons set out below.

Retail voice services to larger business customers

Larger corporate customers have strong buying power, a greater ability to protect their interests than is the case for individual consumers and stand to benefit significantly from bespoke deals in a very competitive market. We would prefer larger customers to be defined by more relevant qualitative criteria rather than by annual spend, for example, by reference to whether they are on bespoke rather than standard terms and conditions and whether they are account managed. **We think larger business customers should be removed from the scope of the Direction.**

If Ofcom concludes that the Direction should continue to apply to larger businesses, it should adopt a principles-based approach similar to that for retail services to smaller business customers.

Data services

The low level of complaints about data services (29 in a two-month period, only two relating to fixed line services) and their nature (most are about “bill shock” rather than inaccurate billing) suggest that there is no need for intervention. In view of this, we believe **data services should be removed from the scope of the Direction**. Again, if a revised Direction took a principles-based approach, CPs may decide to apply its requirements to data services on a voluntary basis.

We believe that the current data services measures in the Direction are flawed. If the Direction continues to be applicable to data services, even on a voluntary basis, we think the specific metrics should be revisited by a cross-industry “experts group”.

Wholesale services

As Ofcom says, GC11.1 does not apply to wholesale services, so it is odd for the Direction, a consumer protection measure, to do so. We have also not found such measures applying at the wholesale level in other countries. CPs have strong buying power, a greater ability to protect their interests than is the case for individual consumers and benefit significantly from bespoke deals. Many wholesale markets are competitive, and where Ofcom has found that they are not, SMP conditions provide protection to CPs in their dealings with a SMP provider.

Wholesale services should not be within the scope of the Direction.

Downstream CPs do not rely on the bill from their wholesaler to bill their retail

customer. Contract terms, service level agreements and industry groups/fora already exist to ensure accurate wholesale service details are passed through to enable timely retail billing.

Conclusion

BT's analysis leads to the conclusion that:-

- the Direction should be removed because commercial drivers and GC11.1 provide strong consumer protection;
- insofar as anything is needed beyond GC11, it would be better to have a voluntary scheme restricted to residential and smaller business customers;
- if Ofcom decides that a Direction is still needed, it should apply to all CPs but not apply to larger business customers, data services or wholesale services;
- the quantitative measures should be replaced by requirements to demonstrate effective, qualitative business-as-usual processes that minimise the risk of wrong bills going to customers in the first place and ensure responsive customer service when things, on occasion, go wrong.

Introduction

1. As Ofcom says, “the [Metering and Billing] Direction is essentially a technical standard intended to ensure that CPs’ billing systems deliver accurate bills”¹. The first Direction came into force in 1993 - twenty years ago - with a calls-only focus. In 2003, it broadened to look at “whole bill accuracy” and in 2008 the current Direction came into force. Its scope was widened still further to look at other consumer services, including data. The current Direction has thus been in existence since 2008. So we are pleased that Ofcom has decided to review it.
2. We agree with Ofcom that there have been changes in the market since the Direction came into force. In particular, more customers are on inclusive packages than ever before, and that remains the market trend. Indeed, those inclusive packages are getting broader. We now see dual, triple and quad play packages where the cost of most of the fixed and mobile telephony, broadband and TV products consumed are included within a single fee [redacted].
3. Ofcom’s statement that Communications Providers (CPs) and Approval Bodies (ABs) report compliance difficulties resonates with us. This is a familiar story, as each time the Direction has been reviewed, one of its objectives was to address the implementation problems of its predecessor. We welcome some features of Ofcom’s proposals but think that Ofcom should take this opportunity to de-regulate further, and, if it still feels that a Direction is needed, it should regulate in a less prescriptive manner.

Protecting customers

4. General Condition (GC) 11.1 states that “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”.
5. For CPs with a relevant turnover of over £40 million per year, there is an additional requirement for their Total Metering and Billing Systems (TMBS) to be assessed by a third party approval body. For these CPs, meeting or working towards the relevant approval appears to serve as a pragmatic proxy for demonstrating compliance in a practical way with General Condition 11.1. After all, with the best will in the world, things very occasionally go wrong. It would not be appropriate for each and every overcharge, however regrettable, to amount to a breach of a General Condition.
6. However, it’s difficult to see what the detailed metrics of the Direction mean to or for customers; they are not customer-centric. Whilst it is important to minimise the risks of problems arising, and we understand why quantitative metrics have

¹ Paragraph 1.5 of Ofcom’s consultation

evolved, we believe that qualitative standards would be an improvement; customers need to know that steps are taken to ensure bills are accurate before they are sent and, if a customer has a problem, the main thing is to know that it will be looked at fairly and sorted out efficiently.

7. We believe that alongside GC11 and the possibility of an investigation under it by Ofcom, **strong commercial drivers** incentivise accurate billing more than a Direction. A reputation for sending inaccurate bills would soon lead to customer complaints, increased costs through failure and brand and PR damage for a CP. This would mean potential customers not signing up to a CP, and existing ones leaving them.
8. Ofcom explains the need for GC11 under the regulatory framework in order to regulate the accuracy of bills ² “because a feature of electronic communications services is that consumers are not generally readily able to quantify 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”. Although this may not have been the case when the Direction first came into force, itemised bills are now commonplace so customers have the means to see exactly how much each call costs and can check that cost against the Price List. And increasingly since the Direction came into force, customers can see that information online and in near real-time.
9. In addition, highly sophisticated tools and reporting are available to larger businesses that enable them to analyse their communications spend quickly and easily, with detailed and flexible management reports available to them. For mobile services, and Pay As You Go (PAYG) services in particular, there is very immediate feedback available on the cost of calls via the device.
10. Conversely, we would suggest that although a gas or electricity meter is at a customer’s home, it is difficult to see how they can monitor their usage and check that it is being recorded accurately. For example, they cannot boil a litre of water and know whether the meter measured the energy used accurately or over- or under-recorded it.
11. We therefore do not accept that the remoteness of the “meter” somehow justifies a Direction.

An alternative approach

12. We agree that customers, in particular residential and smaller business customers, must have faith in the bills they receive from their CP. And measures must be in place to justify that faith. Under the current arrangements, error rates within 0.002% for calls, 0.01% for rentals and 0.05% for one-off charges are

² Paragraph 2.6 of Ofcom’s consultation

permissible. But if it is your bill that is overcharged, whether the error is within a permissible range is a side issue. Any customer would rightly want the overcharge corrected; not somehow explained away as permissible because billing overall was within the tolerance permitted! Similarly, maintaining a ratio of bill refunds to billed revenue per month below a certain threshold offers little **direct** benefit to customers who have been overcharged. The metrics themselves also have inherent weaknesses that mean, in our view, they are only a proxy for accurate billing. For example:-

- the existing metrics rely on both adjustment value and revenue value. Both fluctuate. If revenue drops in a particular month, this means that if adjustments are flat, the target may be missed. Conversely, if revenues increase in a month, this means the target may be easier to hit. There is also a timing issue, because the adjustments may not be made in the month that the bill goes out so the adjustments and billed revenue will not correlate;
- the measure of adjustments is to some extent dependent on customers calling a CP with a complaint. Where customers don't call, issues may not get captured. However, when they do call with a problem, it is easy to get the contact/complaint classification wrong as it relies on what they think it is and how they present it. Accurate classification then depends on the agent's understanding and perception of what they think the customer was saying.

13. We think instead customers would expect and value:-

- **technical checks** - proof of regular testing of systems to show they are charging accurately and the underlying prices charged are correct, for example that itemisation on the bill reflects a customer agreement or published charges;
- **pre-bill checks** - a sample of bills is checked for errors before being sent out. A record /evidence of corrective action taken against any errors found should be expected;
- **customer complaints process** - a Customer Complaints Code (as required by all CPs under GC14.4) that is transparent, accessible, effective and signposts customers to their right to take their issue to an independent external Alternative Dispute Resolution service, with CPs and customers abiding by its findings;
- **root cause analysis (RCA) process** - to make sure that where possible, billing issues are highlighted, analysis is undertaken and improvement programmes are put in place;
- **internal audit/compliance review** - evidence of effective use of internal compliance reviews, including a pricing compliance process where issues detected are registered internally and fixed. Evidence also that customers are kept informed of any specific issues that may affect them and
- **external standards met** – evidence of meeting external standards such as Sarbanes Oxley.

It is accepted that each CP may have a different way demonstrating compliance

under these generic headings but it would be the role of the AB to make sure these basic business checks were met in some form.

14. If a Direction is to continue, rather than assess CPs' TMBS against the current measures, we think it would be better for customers - and CPs - for their business-as-usual operations to be assessed so that they can demonstrate that:-
- the processes described above are working effectively and
 - they can be approved by an independent third party (either as a mandatory or voluntary requirement).

Scope of the Direction

15. As things stand, only CPs with a relevant turnover of over £40 million are covered by the Direction. Ofcom does not explain in this consultation why it has been set at that level, or at all. We presume it is because Ofcom recognises that the Direction is burdensome and it doesn't make commercial sense to require smaller CPs to meet it. We do not think that this is satisfactory. If the Direction delivers such important benefits to customers, it ought to apply to all CPs so all customers benefit. If it doesn't, then the trigger should be removed.
16. If Ofcom maintains a Direction, and retains a trigger, we think it should review the £40 million figure. This consultation does not present evidence by way of a comparison of outcomes for the 93% of customers served by CPs covered by the Direction and the 7% that are served by CPs not covered by it (Ofcom's figures³). Equally, Ofcom has not shown that products or services not covered by the Direction were billed less accurately than those that are. Ofcom has not explained why this was not done. It may have been, improbably in our view, that the sample size was too small. In order to increase the potential sample size it could analyse next time around (if sample size was the reason for not doing so for this consultation), Ofcom could raise the threshold where it kicks in, reducing the number of CPs covered by it and so increasing the size of the base not covered by the Direction that could be sampled effectively next time the Direction is reviewed.
17. However, we think that the alternative approach we suggest above would be business-as-usual for **all** retail CPs in order to meet GC11.1. As such, it could readily apply to all CPs (not just the larger ones), so all customers could be better and proportionately protected (insofar as the Direction achieves this currently). Indeed, the procedures above could apply to all products and services, not just Publicly Available Telephone Services (PATs). There is no obvious reason why a principles-based approach could not apply to data services, should they remain within scope. And in fact to pay TV, given the increase in triple and quad play packages.

³ Paragraph 2.23 of Ofcom's consultation

18. If the Direction is removed, or retained and we move away from a metrics based approach, this would be consistent with Ofcom's duties of:-

- promoting innovation - it could allow for greater service offering innovation because CPs would be less restricted by technical constraints;
- harmonisation - lower a regulatory hurdle in the UK that is set lower, if at all, elsewhere in the world (see Annex 1) and
- removal of unnecessary regulatory burdens - we are not convinced that Ofcom has discharged its duty and gone as far as it can in this consultation to propose changes to review and remove burdens that become unnecessary to the greatest extent possible.

Evidence

19. Ofcom outlines the conclusions it draws from the evidence it gathered in preparing for this consultation⁴. We have itemised them in the bullet points below with our views on each, in brief, in the form of sub-bullets:-

- a significant proportion of voice bills remain metered where it is important that consumers can be assured of their accuracy;
 - whilst most customers are on inclusive call packages, most bills will still include metered calls. For example, many inclusive packages will exclude one or more of; calls to mobile numbers, international numbers and non-geographic numbers, for example to premium rate numbers. However, of course, customers will be able to see the cost of such calls on their regular itemised bills, or if more urgent, check them in near real time online or by calling their CP.
- CPs and the ABs report that the Direction has driven improvements to their billing systems;
 - whilst working with ABs may have been helpful, working to meet the specific measures has been in many ways a distraction as the measures are not seen as core to providing accurate bills. We think working with them against the sort of principles described above, or against metrics that are part of business-as-usual because they are genuinely and directly important to customers, would be more beneficial, and more cost effective. Making the provisions of any new Direction voluntary would of course prove the point; if CPs benefit from their engagement with ABs, it will continue; if not, it won't.
- 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;
 - it is difficult to know what drives the number of complaints to Ofcom about bills. Firstly, we would suggest that the reduction would be more likely to be down to changes in the market, with more customers on inclusive packages. Secondly, the number of complaints that

⁴ Paragraph 3.50 of Ofcom's consultation

resulted from inaccurate bills - rather than “bill shock”⁵ - we believe would have been vanishingly low. Thirdly, it may also be a result of CPs dealing better with complaints in the first place. So it is not clear the extent to which the reduction in so-called billing complaints relates to whether the Direction is working.

20. In short, Ofcom has drawn the inference that the Direction “may have had a positive effect”⁶ from a reduction in the number of complaints. We would say that based on the same evidence that Ofcom presents that changes to the market - (more inclusive packages), accurate billing etc - have reduced the number of complaints. And these complaints, in our experience, generally arise from bill shock rather than inaccurate billing.
21. Ofcom has also concluded that the Direction has helped CPs. There may be some truth in this. But at the same time, we would say that measures we take and deem necessary to demonstrate compliance with GC11.1, the same measures that we see continuing under any principles based approval regime, are of greater significance.
22. We believe that Ofcom has missed two opportunities to prove its point that the Direction works. Firstly, as we say at paragraph 16, seven per cent of customers are served by CPs not covered by the Direction. Ofcom could have used this base as a “control group” to show that customers of these CPs were somehow disadvantaged because their CPs were not covered by it. Had customers of these CPs experienced significant problems with inaccurate bills, we think there would have been a media splash. We conclude there was no such detriment,
23. Secondly, we have tried to see how regulators in other countries try to make sure that their CPs issue accurate bills. It wasn't easy getting the information and we acknowledge it may have been equally difficult for Ofcom. In doing so, we found no examples elsewhere in the world of metering and billing regimes as prescriptive and challenging as ours. We are not aware of any that operate at the wholesale level. We have not heard of customers outside of the UK being ill-served by their regimes, and Ofcom has not suggested this is the case. Annex 1 sets out in brief the examples we found.
24. Whilst Ofcom calls for more evidence to support any other views that CPs wish to advocate, whilst Ofcom relies on a reduction in the number of complaints to support the ongoing need for a Direction, we would say that market changes account for the reduction. Therefore, we reach a very different conclusion; that **the Direction can safely be dispensed with**, leaving a stand-alone GC11.1 general requirement for accurate billing.

⁵ See <http://consumers.ofcom.org.uk/2012/03/tackling-unexpectedly-high-phone-bills/> for Ofcom's action plan on “bill shock”

⁶ Paragraph 3.21 of Ofcom's consultation

Services to larger businesses

25. As we state below in the context of an approval regime for wholesale services, large corporate customers have strong buying power, a greater ability to protect their interests than is the case for individual consumers and stand to benefit significantly from bespoke deals in a very competitive market for both traditional voice and broadband data services. The high degree of bespoke contracting, billing and flexible service delivery makes adhering to the Direction difficult, costly and, as far as this customer base is concerned, undesirable insofar as it might restrict what could be offered to them.
26. We therefore believe that not only should the error rates and tolerances set in the Direction not apply in respect of larger businesses but that larger businesses should be excluded from the scope of the Direction.
27. Ofcom is asking for evidence from CPs and ABs to support removing larger businesses from the scope of the Direction⁷. Instead, we suggest that the burden should be on Ofcom providing evidence for keeping them within scope. We note in particular that Ofcom has not presented complaints data to show that larger businesses are referring such problems to them. This suggests to us that they do not need the protection of the Direction.
28. In the event of Ofcom not removing services to these customers from the Direction, we would advocate adopting a principles-based approach as described above for services to other retail customers.

Wholesale services

29. Like Ofcom⁸, we *“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”*. We also note that Ofcom states that⁹ *“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”*.
30. As Ofcom says, GC11.1 does not apply to wholesale services, so whilst retailers rely on getting accurate and timely data with which they can bill their retail

⁷ Paragraph 3.119 of Ofcom's consultation

⁸ Paragraph 3.149 of Ofcom's consultation

⁹ Paragraph 3.129 of Ofcom's consultation

customers, it is still odd for the Direction to apply to wholesale services. We also note that where metering and billing regulation applies in other countries, we have found no examples where it applies at the wholesale level. So we are firmly of the opinion that wholesale services should not be within the scope of the Direction. Wholesale CPs do not directly bill end users and there is also a) no link between the wholesale bill and the bills that residential and small business customers receive and, as a result, b) no danger of consumer harm.

31. Most downstream CPs will have a strong focus on cost and margin management with their wholesaler so therefore do not solely depend in the same way on their wholesale bill. CPs are able to exercise bargaining power between themselves. Many wholesale markets are competitive, and where Ofcom has found that they are not, SMP conditions provide protection to CPs in their dealings with a SMP provider. Contract terms, service level agreements and industry groups/fora exist in the majority of situations to ensure accurate wholesale billing data to enable in turn accurate and timely retail billing, usually providing remedies and penalty payments to address any errors. In the event of any disagreement which the CPs are not able to resolve between themselves, their contracts may provide a dispute resolution procedure e.g. determination by a suitably qualified third party financial expert. Alternatively, as recognised in paragraph 29, CPs are also in a position to raise disputes with Ofcom, if required.
32. We are keen for any metering and billing regulation, should it remain, to differentiate between customer performance expectations for a wholesale CP i.e. service delivery obligations to CP customers (e.g. complete and timely delivery of accurate data) in contrast to expectations on retailers for consumer billing accuracy. This either means setting relevant measures that are realistic and make sense when looking specifically at wholesale CPs and retailers, or reusing existing wholesale measures where in our opinion they work well. Commercial agreements and voluntary commitments are already in place, and we believe are effective.
33. In the event that the Direction remains and Ofcom changes its mind and decides to keep wholesale services within scope, any new regime should be consistent with controls and measures already in place, along the lines of the principles-based approach we advocate for retail services. Our current measures focus on the complete, accurate and timely delivery of usage data to CPs to support their onward billing of consumers along with the provision, modification and cessation of services. We feel these agreed principles work well; bringing these principles to life means analysing test calls, record aging and deletion analysis.
34. From a wholesale CP's perspective, we see no need for data products to be included under the mandatory provisions of any Direction. It is important that any obligations imposed on CPs should be appropriate, clear, realistic and achievable. Data tends to be sold at the wholesale level as an access "pipe", with no volume-based usage charge. There tends to be a one off connection charge and an ongoing rental charge that is based on the size of the pipe, rather than the amount of data that flows through it. Whilst in some situations the data

usage is measured, this is for the purpose of identifying hot spots rather than for billing purposes.

Approval Bodies

35. Three Approval Bodies are appointed by Ofcom. They are separate organisations, with different individuals working in them with their own distinct approaches.
36. The wording of the Direction itself is open to interpretation. In our experience, guidance and interpretation of the Direction by ABs has been inconsistent and conflicting. This has led to extended disputes and costly reviews to establish facts and reach agreement over existing compliance. We would like to see more collaborative governance via the existing MABABF (Metering and Billing Approval Body Forum) or for Ofcom to make provision periodically to review the ABs as it does with ADR providers, to make sure there is a consistent approach and that all CPs applying for approval are being treated the same regardless of their choice of AB.

Annex 1 – answers to Ofcom’s specific questions

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.

Given the competitiveness of the market for voice services where the incentive to bill customers accurately is commercially driven, we envisage a less intrusive regulatory arrangement. It is not in CPs’ interests to send out inaccurate bills. Doing so would lead to:-

- customer dissatisfaction;
- complaints;
- brand damage;
- PR damage and
- potential investigation under GC11.1, with financial penalties available if a breach is found.

Billing errors are a big deal. Customers lose confidence in their CP and such problems can often make the news and consumer programmes. We do not think that any Chief Executive or senior manager wants to spend time managing or explaining billing errors on the Today programme!

We do not think that Ofcom has proved its case that the Direction should continue to apply. Ofcom has not shown any detriment to customers served by CPs not covered by the Direction (smaller CPs) or indeed customers of the larger CPs who do not yet have approval under the 2008 Direction. It has also not shown how things work in other countries; we understand that no other country has such a rigorous approval regime or such strict performance standards, yet Ofcom has not shown greater harm arising to customers in other countries relative to the UK. Many simply have a requirement to charge accurately (along the lines of GC11.1 without 11.3), and where there are measures and tolerances, they are less onerous than in the UK.

In order to comply with GC11.1, even without the Direction, we would and do invest in systems, training, processes and procedures to ensure that we get bills right, can explain bills to customers and fix things quickly when, occasionally, they go wrong.

The current voice measures are still based on the limitations of pre-computerised strowger technology. This cannot be seen by a consumer even if they inspected their bill. We accept that part of the rationale for the Direction is to prevent CPs taking advantage of customers where behaviours would be unseen and disadvantage them. However, this is now at a level of granularity that is largely irrelevant by comparison to the sort of rounding rules which sit within terms and conditions and are applied by all CPs, and indeed in other fields of commerce. Any new rules should focus on proper implementation of such rules rather than the current target.

In the event that Ofcom concludes that a Direction can be justified, it needs to be clear, simple, meaningful and relevant to smaller businesses and residential customers. It should not be technically complex, open to interpretation or costly to administer. Our view is that if a Direction remains, it should become a principles-based requirement. These principles should be based on sound business-as-usual processes that are already in place to meet GC11.1.

If Ofcom were not minded either to remove the Direction, or establish a principles-based arrangement, we believe the current metrics should be reviewed and changed. Specific new measures should:-

- follow an international review of what works well elsewhere in the world;
- establish measures that are meaningful to customers and
- be based on metrics available in the normal course of business.

Our view is that approval under any Direction, principles-based or otherwise, should be voluntary. The benefits of such an approval regime based on the checks and processes already in place or used to comply with GC11 would be:-

- any CP, regardless of size, could apply;
- approval could be sought in relation to any products and services or customer segments;
- approval could be used as a market differentiator and
- approval would provide assurance to end users and aid any additional contractual negotiations.

We think that a cross-industry “experts group” should be established to create the detail of a Direction, for consultation, should it be required.

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?

We agree with Ofcom that on the basis of the evidence it has provided - very few complaints¹⁰ - there is not a strong case to mandate data service requirements. We also experience relatively fewer complaints about broadband than about voice. Insofar as Ofcom refers to complaints about data, it is not clear whether they are about billing accuracy. We wonder if they are more about bill shock. And given that 90% seem to be around mobile services, intuitively we suspect that it might be about higher than expected data download charges whilst roaming, as reported in Ofcom’s recent bulletin on the work it has been doing on bill shock, i.e. unexpectedly high bills.

We suspect that there are four reasons why the voluntary measures for data have not been adopted:-

¹⁰ Paragraph 3.62 – in two months, two complaints related to fixed line data

- CPs will have been focusing their efforts on meeting very exacting and mandatory voice services targets; data targets would only be considered once a CP's house was in order on PATS;
- the data metrics currently are neither meaningful to customers nor reflective of CPs' business practices;
- the low level of complaints around data doesn't suggest there is a problem that needs addressing through approval so CPs are unlikely to invest time, effort and money going through the process and
- applying for approval but failing leaves CPs worse off than not applying in the first place as that failure then becomes documented on the AB's web-site as an application that has not been certified.

In our view, GC11.1 alone would protect customers' interests. It does already for customers of those CPs not covered by the Direction. We believe data services should be removed from the scope of the Direction.

If approval remains voluntary, Ofcom says it would consider incentivising take up. It is not clear what Ofcom has in mind as an incentive for take-up. Commercial advantage would, in our view, be the driver.

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.

If Ofcom keeps data services in scope, we think fundamental changes should be made to the detail of the Direction/Scheme, along the lines described in response to Q1.

Mandating what we believe to be flawed data services measures in addition to overly challenging voice measures would be a mistake. The current data measures largely pre-date the current "all inclusive" consumer options that are now commonplace in the market (with broadband as the primary product). They attempt to apply a measurement approach for "one-off" and "usage" charges that is outdated, measuring data accuracy in a similar way to voice calls. Data services have moved on since 2008 and so should the Direction.

If Ofcom adopts our suggestion of a (voluntary) principles-based approach to the approval regime, based on standard business practices, it could also apply to data services if Ofcom does not accept the case for removal. NB - whilst we think it is widely accepted that data services (the definition of which could be revisited in the context of any revised Direction) will grow over the lifetime of any new Direction, there is no reason to think that billing accuracy would at the same time deteriorate.

If Ofcom maintains a Direction and decides not to adopt the principles-based approach scheme suggested in response to the previous questions and within the body of our response, we think the data billing provisions should be reviewed and updated in the same way we recommend for the voice provisions. This should follow a similar review to that we suggest for voice in response to Q1 above, i.e. worked on

by a cross-industry “experts group”, which should review how they deal with this issue in other countries, find measures that would be meaningful to customers and base their decisions on relying on business-as-usual metrics as far as possible.

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?

Insofar as a Direction would continue, we do not think the scope of the Scheme should apply to large businesses. Large corporate customers have got strong buying power and a greater ability to protect their interests. The high degree of bespoke contracting terms and conditions, billing and flexible service delivery is not compatible with the prescriptive character of the Direction. Such customers generally will be individually account managed, have considerable resources and business tools at their disposal to ensure that they are being billed correctly. It is difficult to see what additional protection the Direction gives them.

Taking BT’s customers as an example, large businesses are able to, and do, monitor their bills effectively through the online tools that we offer to them. “Analyst Converge”, for example, is a powerful, user-friendly, online billing analysis tool that provides immediate access to BT OneBillPlus, which is a single telephone bill covering all of the customers’ services across different lines, services and sites. It allows customers to look down to an individual line and assess if the usage is correct, if there are any anomalies and see onward charges to their cost centres. It can also let them understand usage at site level so they can make commercial decisions on how many lines are required. We would be happy to demonstrate this tool to Ofcom to allow it to see first-hand its effectiveness as an analytical billing tool.

[redacted].

We do not believe that there is evidence of market failure that would justify maintaining the existing detailed regulation in the large business market. [redacted].

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?

We believe that a principles-based regime could apply equally to larger business customers, though an element of tailoring to this market may be appropriate, reflecting for example the fact that they will be account managed in a way that residential customers are not.

The current error rates and tolerances do not make sense in the context of larger businesses. One large adjustment (small in the context of the size of the customer’s bill) could put a CP out of its approval margin for error; the existing metrics could

potentially result in a CP having to operate error-free to remain within the approval tolerance.

In the event that Ofcom concludes that error rates and tolerances should remain for larger businesses, the individual metrics should be reviewed. Once again, we think that a cross-industry “experts group” should be asked to bring forward appropriate proposals for consultation. If alternative requirements need to be adopted, then they too should be considered by the “experts group”.

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.

In applying a carve-out for “large businesses”, it is obvious that there needs to be a clear and consistent definition of large businesses across the industry for the purpose of the Direction. Such a definition should be easy for a CP to take account of. Billed revenue, which we would know, would seem to be better than, for example, a business’ number of employees, which we would not know. Even if we were to be told the number of employees a business has at the start of the regime (which may not be easy), it would be difficult to refresh this information on an ongoing basis.

If a spend threshold is adopted, £50k per annum would be as good a figure as any, although how industry would deal with fluctuating bills would have to be thought through.

That said, we think it would be far better to define larger businesses by other criteria, in terms of the service they receive rather than simply the size of their bill. Larger businesses should be defined as those which are on bespoke contracts (rather than on mainstream products with standard terms and conditions) and are account managed. This would be a better indicator of how dependent those customers are on any putative protection offered by the Direction.

Should Ofcom define larger businesses by bill size, we believe that the definition should embrace the public authorities that have the right to buy telecom services under framework agreements that are negotiated by the Government Procurement Service, regardless of the underlying individual bill size. We therefore propose that the definition should be amended as follows:

“Large businesses are consumers with an annual spend with that CP in excess of £50k per annum or those defined as public authorities for the purposes of public procurement of goods and services on the basis of the “The Public Contracts Regulations 2006, Part 1 Regulation 3”.

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.

Yes, wholesale services should be removed from the scope of the Direction for the reasons set out in paragraphs 29-34 of our response. That they are covered by the Direction today is an anachronism, given that GC11 does not cover wholesale services. It is a retail protection measure for small customers.

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?

The contents of wholesale bills do not flow through to retail bills. In any event, even if they did, we believe that CPs providing retail services have the size and influence to effectively address any problems that might arise. They also have powerful tools at their disposal. As such, they can ensure that they get the correct data records and are correctly billed by their wholesale CPs.

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

See the main body of this response.

Annex 1 – Overview of billing requirements in other countries

	Does a general obligation of issuing accurate bills exist?	If yes, to what services does it apply?	Does a detail regulation requiring specific performance standards exist?	If yes, what are those requirements and to which services they apply (just voice, voice and data, etc.)?
Australia	Yes	Circuit-switched fixed and mobile voice services	Minimum performance indicators and tolerance levels are agreed among the operators and are included in an Industry Code. The targets are more realistic than the UK ones	This applies only to retail systems, based on a 12 week sample of records run only on an exceptional basis and only if the end-to-end delivery of calls to customers has changed significantly
France	No			
Germany	Yes	PATS	No	
Ireland	No			
Italy	Yes	All ECS	Accuracy of retail bills is defined as the percentage of invoices disputed leading to refunds.	CPs of fixed and mobile services define their own target year on year and publish their effective performance at the end of the year
Netherlands	No			
Spain	Yes	All ECS	Detailed regulation applies to CPs with a turnover > 20 M Euros	Performance standards, which are largely similar to the UK ones, apply to retail services, however the system is less prescriptive and no obligation to get billing systems approved is in place
USA	Yes	Voice only	No	