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**NON-CONFIDENTIAL**

25<sup>th</sup> April 2013

Dear Stephen

**Hutchison 3G UK Limited (Three) response to Ofcom's Review of the Metering and Billing Direction**

This is Three's response to Ofcom's review of the Metering and Billing Direction. Three is grateful for the opportunity to respond formally to this review and build on the contributions made by Three in response to the Ofcom Call for Inputs on the Metering and Billing Direction.

Three believes that high quality, accurate and timely billing is an integral part of the customer experience. They build trust, ensures that customers know that they are only paying for the products and services they use and consume. Importantly too, they helps to build and maintain brand and customer satisfaction. Three therefore cautiously welcomes Ofcom's proposals.

Three also believes that accurate billing is as important for large business and wholesale customers as it is for retail customers. As we explain below, Three believes that changes Ofcom proposes in relation to these could harm competition and distort the market. Before Ofcom pursues these matters further, it should look to build a compelling evidential base that they will not lead to customer detriment or harm, or a loss of competition in the market.

**Three's Responses to Consultation Questions**

**Q1: Do you agree that the Direction should continue to apply 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.**

**Yes** – Accuracy of billing and consumer trust in the services they use are intrinsically linked. The primarily focus of the Direction must be to ensure that retail customers can have total trust in their phone bill. Specifically, customers should be confident that their bills are complete

representations of their usage, that charges are as expected and ultimately they are happy to make payments. However, Three notes that for this whole process to work effectively, this process must be light touch and proportionate. Three note that energy customers on a standard dual-fuel tariff will pay on average £1,420 each for the energy they consume.<sup>1</sup> Even the most expensive phone tariffs would in a year amount to only a fraction of this cost.

Three recognizes that getting billing right is a fundamental customer service requirement and Communication Providers are, under the current system, incentivised to ensure billing is both accurate and the highest standards. Three notes that the high standards associated with billing are, however, not necessary a consequence of the regulation but are fundamental if Communication providers are to maintain their brand and customer satisfaction as well as to avoid the costs associated with billing queries. The existing regulation is a useful corollary to this.

Three believes that there is a clear and continued need for the Metering and Billing Direction. However, this does not mean that requirements set out in the Direction should not be updated. Ofcom is correct to note that the accuracy and tolerances thresholds set out in the direction have been in place for some time and should be revisited. The Direction also does not account for the growth and now ubiquity of bundled services, making no distinction between in bundle and out of bundle calls. Three highlighted this inconsistency in its response to the 2008 Direction. Three is hopeful that the revised direction will take this into account.

**Q2: 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?**

**Yes** - Three believes that Ofcom's proposals to encourage the voluntary review of the accuracy of billing for data services, is sensible and proportionate and an appropriate response to growth in use of data services, either through fixed or mobile services. However, Three encourages Ofcom to look at how billing and metering in relation to data might be effectively included more formally in the Direction in due course, taking account the growth of data services and any rise in the number of complaints in relation to data.

However, we note that currently the rate of complaint at the accuracy of billing for data services is significantly below that of voice services. Ofcom has recorded only 29 complaints for the billing of data services between 1<sup>st</sup> September 2012 and 31<sup>st</sup> October 2012 compared with over 1800 complaints in relation to billing for voice services (although the proportion of these complaints that were upheld is not been made clear in the consultation).

Given the low levels of complaint, Three cautions Ofcom from moving towards a more formalised or mandatory system in the short term; noting the additional costs that CPs would incur as a consequence of a move towards a formal system of review, particularly given ongoing issues with monitoring technologies in respect of data services. In respect of this, Three questions what measures Ofcom intends to pursue to encourage the inclusion of data services. Three also notes that for this purpose data has not been defined.

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<sup>1</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/smr/Pages/indicators.aspx>

Three also stresses that it is important that the voluntary system of review proposed by Ofcom is given time to bed in and establish itself properly as a means of ensuring the accuracy of billing for data services.

**Q3: 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.**

**Yes** – However, Ofcom should ensure that any changes to the provision are light touch and proportionate and that they are an accurate reflection of demonstrable consumer harm.

Three believes that any review of data billing in Annex D should consider the bundling of services and the impact of bundled offers on bills. Ofcom should also look at the relevance of data thresholds based on data sessions measured in bytes, as data bundles are typically measured in gigabytes (and most retail customers remain within those bundles), to say nothing of the growth of unlimited bundles.

Three notes that this may present significant challenges for independent verification of the volume of data transfers as these will vary depending on file packet size, packet protocols, the route followed, resubmission and compression.

**Q4: 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?**

**Yes** – Whilst Three welcomes efforts to simplify regulation and de-regulate where appropriate, we do not think that removal of the regulation is appropriate. Although the primary purpose of the Direction should be to ensure that retail customers can have total trust in their telephony bill. However, Three believes that applying the same standards should broadly apply to large business and corporations and that this can be done without placing unnecessary and unnecessary burdens on Communications Providers.

Whilst we accept that for many large businesses the receipt of a telephony bill is like any other business expense: it requires validation and approval prior to payment and that many large businesses and corporations will have dedicated personnel and systems to cover this Accounts Payable function. However, that function is impossible if there is no way of determining through billing how much a business has spent on telephony other than the bill: the bill payer is fundamentally reliant on the Communications Provider to set out the charges. Although the key terms are set out in contract, as well as in purchase orders and terms and conditions, these do not necessarily provide a more appropriate and effective mechanism for the resolution of disputes in relation to the accuracy of billing.

Consequently, believes that bills provided to large businesses should be covered in scope of the Direction unless meaningful evidence is received in response to the Ofcom consultation from large businesses that removal of this regulation will not result in demonstrable consumer and business harm.

**Q5: 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?**

**Yes.** Three believes that the thresholds in the Direction need to be updated and benchmarked against other services (e.g. water metering, petrol pumps, gas and electric meters etc.) to ensure that they are appropriate. As they stand, the thresholds are easily breached in relation to domestic and small business customers. In relation to large business customers they can be almost meaningless.

Removing error rates and tolerances in this regard would be a welcome and long overdue reflection of this reality. Therefore Three broadly welcomes the proposal to remove accuracy and tolerance thresholds with regard to large business customers, but suggests that there may be other more appropriate thresholds that should be applied. We therefore suggest that Ofcom explore these options fully before removing error rates and tolerances from the Direction in relation to large business entirely.

**Q6: 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.**

**Yes.**

**Q7: Do you agree with the proposal that wholesale services should be removed from the scope of the Direction? Please provide reasons for your views.**

**No.** Although Three favours measures that simplify the existing regulation and remove regulation where appropriate, we believe that the proposal to remove Wholesale services from the Direction would be inappropriate and potentially harmful to competition.

Three believe that billing systems provide a point of real differentiation and customer service for business customers looking to procure wholesale services from providers. Without these systems, the ability to compare products and services diminishes as also does necessary and healthy competition in the sector.

Three also notes that there are a number of different business models operating in the wholesale and retail spaces. However, underpinning this diversity is the flow of call detail records between entities. At one end of the scale, these records are used in full and total reliance is placed on their integrity to bill end customers. These records are also important for establishing who the responsible provider is on those occasions when breach of the Billing and Metering tolerances has occurred.

At the other end of the scale, these records may be used just for wholesale settlement purposes. In between, sections of the call detail records may be utilised to varying degrees: For example a MVNO (mobile virtual network operator) may use the duration field but round these up to the next minute for their customers.

Three also notes, that billing records are also of use where under-charging has occurred and is of the view that accreditation for undercharging (set out in Annex F) would be a desirable outcome of the review.

It is for these reasons that Three believes that the Direction should continue to cover wholesale as well as retail bills, but this should be included as an Annex to the Direction.

Three notes that an expert working group was set up in 2011 tasked with providing guidance on the implementation of interworking. Three was a member of this group and agreed with the concerns raised over an end to end threshold and guidance for best practice covering flow of records between organisations.

**Q8: If wholesale services are removed from the Direction, to what extent should the relationship between retail and wholesale CPs be covered in the Direction?**

Three is clear that as there is a dependent relationship between wholesale and retail billing, the Direction should continue to cover wholesale billing. This is an important protection for both consumers and Communication Providers.

Although we recognize that the primary focus of the Direction must be ensuring that retail customers can have total trust in their phone bill, the maintenance of accurate information about call flow between Communications Providers, under the Direction as it currently stands, is a crucial part of this. Three notes that such records are not only used in full in the generation of bills for end customers, they are also used just for wholesale settlement purposes. Three asks what steps a reseller might take to check the accuracy of a disputed bill in the absence of a full and proper billing record

Three believes that it is important that these protections are not lost and that it is appropriate for provisions in relation to wholesale billings to be included as an Annex to the Direction.

As a minimum, Ofcom should look to include a further annex to the Direction setting out the minimum level of checks that should be undertaken on files and records both provided and received by issuing and receiving parties.

**Q9: Do you have any further observations or evidence on the Metering and Billing Direction?**

**Thresholds:** The thresholds in the Direction need to be updated and benchmarked against other services (e.g. water metering, petrol pumps, gas and electric meters etc.) to ensure that they are appropriate. Specifically, the threshold for usage needs to be updated to reflect widespread provision of inclusive bundles. Three believes that the £600 limit for usage is impractical and no longer workable, as a relatively small number of incidents can trigger a breach.

**Interaction of metering in bundles:** The interaction between metering and billing in respect of bundles needs further consideration and clarification. Three notes that bundling has done much to reduce the likelihood of inaccurate billing for many customers. However, we also suggest that Ofcom should consider inaccurately charged or metered events which are inclusive at the point of consumption. The suggestion is that these are not considered errors, as they have not been charged incorrectly. Clarification on this point would be useful.

**Timeliness and scope of the Direction:** The Direction should be updated on a regular basis to ensure it remains relevant to customers and the market. For example, the Direction does not mention SMS services. It is assumed, by inference, from the definition of a 'PATs service,' that SMS services are not in scope. For the purposes of clarity, both for communications providers and the consumer, this should be explicitly included within the scope of the Direction.

As a general point, Three encourages Ofcom in its intention to pursue a voluntary approach to the review of metering and billing in relation to data and sees real merit in such an industry led approach to a potential issue. We therefore request that Ofcom allow sufficient time for an appropriate, voluntary system of review to be developed and implemented before looking to make any further changes in this regard.

Lastly, Three suggests that given the almost exponential growth of bundles services the focus of any intervention in relation to metering and billing should be on what matters most to customers. This is less the listing of individual services set out in the bill and more around whether the billed amount is what the customer expected. This may mean that performance measurement testing at the limit of bundle allowances should be fine-tuned, to ensure that the transition to out of bundle rates is absolutely correct,

We would of course be happy to discuss any of the matters raised further, if that would be of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'X Mooyaart', written in a cursive style.

Xavier Mooyaart

Head of Legal – Regulatory and Competition