

Vodafone's response to Ofcom's

"Review of the Metering and Billing Direction"

April 2013

Non-confidential version

Summary and Conclusions	3
Section 1: The requirements for fixed and mobile voice services for households and small and medium-sized businesses should remain unchanged.	5
Section 2: Fixed and mobile data services should remain subject to voluntary provisions.	6
Section 3: Removal of accuracy and tolerance limits for services to large business consumers with a telecoms spend in excess of £50k per year.	6
Section 4: Removal of wholesale services.	7
Annex 1: Consultation Questions	8

Summary and conclusions

Vodafone welcomes Ofcom's review of the Metering and Billing Scheme. Vodafone currently holds Total Metering and Billing accreditations covering both consumer orientated mobile origination and fixed-line SME and large business customers. We are also one of the major wholesale providers of telecommunications and consequently our business is covered by every aspect of the review.

Vodafone broadly agrees with Ofcom's conclusions to the review. We acknowledge that the objectives of the scheme largely reflect best practice and are primarily of benefit within the consumer market where they provide reassurance in lieu of the ability of consumers to exercise sufficient buying power to ensure and manage billing accuracy. We have also acknowledged previously that the scheme can assist the billing departments of Communications Providers to drive through business improvements in their organisations; although it remains questionable whether advancements with clear business benefit wouldn't occur in the absence of the scheme.

Ofcom's consultation at a high level proposes four key points and we summarise Vodafone's position on each below:

- We agree that value can be gained from TMBS in its current format in the residential and small business arena. However we do not believe that Ofcom has presented sufficient evidence to meet the requirement for proportionate regulation beyond these groups. Vodafone does not support the assumption that medium sized enterprises should remain part of the scheme.
- Vodafone agrees that there is currently not sufficient evidence of consumer harm or billing inaccuracy complaints to warrant bringing data products under the aegis of TMBS in anything more than a voluntary manner. The market is however increasingly moving towards data based services. The Vodafone Red Brand offers 'unlimited calls and text' as of today. This will eventually replace all legacy tariffs and Ofcom will need to keep this area under review and consider intervening in the event that evidence of consumer harm emerges.
- Large business enterprises should be removed from TMBS entirely and not just freed from the accuracy thresholds. We agree with Ofcom's findings in relation to the buying power of these organisations and find no convincing evidence offered that warrants their continued inclusion, even in a reduced manner.

The methodology for exclusion should be agreed between the CP and its chosen audit body with the emphasis being on the desired outcome of removing medium and large business enterprises from TMBS rather than attempting to audit against a prescribed requirement which may rapidly degenerate into no more than a resource-hungry scoping exercise of no real benefit.

- We agree with Ofcom that wholesale customers should be removed from TMBS entirely. Vodafone does not believe that General Condition 11 intended for wholesale customers to fall within the remit of TMBS and that it is instead focussed at providing accurate bills to the End-User. The 'retailer' organisation which contracts with the End-User is a fundamental part of this chain and ultimately is responsible for its compliance with TMBS. Part of this responsibility is the management of wholesale partners to ensure that they are compliant with GC11.1. Vodafone does not believe that TMBS offers these 'retailers' any more comfort or assurance than they are able to already gain commercially from their supplier or through their dedicated interconnect billing and account teams. To fall under the requirements of TMBS such retailers have revenues in excess of £40m which in Vodafone's view is more than significant enough to enable the exercising of considerable buying power.

The requirements for fixed and mobile voice services for households and small and medium-sized businesses should remain unchanged.

Vodafone recognises that the scheme can be of benefit to households and small businesses and on this basis it is consistent with Ofcom's consumer protection duties to seek to continue the scheme in its present format. We also agree with the general assertion that the scheme continues to be fit for purpose in this respect.

We do not however believe proportionate regulation justifies the inclusion of 'medium-sized' enterprises within this scope. Consumer protection measures in the General Conditions are typically limited to residential and small business consumers in accordance with the Communications Act 2003. Whilst GC11 does not constrain itself to this sub-set Vodafone believes that for Ofcom to achieve proportionate regulation it is necessary for Ofcom to justify the inclusion of each segment captured under its regulation. Evidence is offered in terms of the number and type of complaints received by Ofcom, but there is no indication offered as to how these figures relate to different consumer segmentation e.g. how many complaints were made by medium-sized enterprises. Ofcom's duties under the 3(3)(a) of the Act requires it to perform its duties with regard to whether they are "proportionate... and targeted only at cases in which action is needed". We question whether Ofcom has sufficient evidence in relation to medium-sized business enterprises (as well as large-business enterprises) to warrant the application of TMBS regulation. Vodafone sees no evidence offered in the consultation to suggest that this is the case.

Ofcom in this review appears to have started from the status quo of 'all inclusion' and sought to justify only the removal of large business without considering whether extension of regulation beyond the more typical household and small business consumer was justified or proportionate. Ofcom calls for evidence to justify the removal of regulation from large business, but appears to offer no firm evidence why medium-sized businesses require more protection than GC11.1's requirement for a CP to render accurate bills.

TMBS provides Ofcom with a mechanism to assess the extent of compliance, but this is out of keeping with the remaining GCs where it is generally accepted that compliance is the responsibility of the CP. It is unclear to Vodafone why Ofcom applies such a prescriptive scheme beyond households and small business consumers nor why this forms anything more than a 'code of practice' approach as adopted for other areas of consumer protection such as GC14.

The lack of international benchmarks would also suggest that Ofcom's regulation in this area is far more rigorous than anywhere else in Europe and Vodafone calls upon Ofcom to reconsider whether this represents a proportionate and targeted intervention.

Fixed and mobile data services should remain subject to voluntary provisions.

Vodafone acknowledges that this is a judgement call which Ofcom needs to make within the wider context of the scheme. It is clear that the market is increasingly moving towards data based services both as parts of inclusive bundles and as the underlying delivery mechanism replacing traditional voice services. This is a long-term trend which has been prematurely predicted in the past, and Ofcom is right to consider the implications to the scheme.

Vodafone agrees that Ofcom's decision to maintain the voluntary nature of data services under the scheme is correct in the spirit of light-touch non-interventionist regulation. It will no doubt be argued that by the time of the next TMBS review, data-based services will be an entrenched part of consumer offerings, but that is not to say that there will be a need for additional consumer protection requirements. Ofcom correctly highlights the inclusive and bundled nature of many of these services with correspondingly low levels of complaints. Ofcom is correct not to impose regulation on data services in the absence of consumer harm and we agree that only voluntary provisions are required. The market will dictate that providers gain the accreditation should there be a consumer demand to do so. Furthermore it remains open to Ofcom to launch own-initiative investigations against individual providers which are failing to meeting GC11.1 or if more widespread to revisit the TMBS requirements at a more appropriate date, based upon the evidence available at the time.

Removal of accuracy and tolerance limits for services to large business consumers with a telecoms spend in excess of £50k per year.

Vodafone does not believe that simply removing the accuracy and tolerance thresholds goes far enough in relation to large business and instead strongly supports the removal of large businesses (and as set out above, medium-sized enterprises) from inclusion within TMBS. Large businesses have the buying power to obtain all of the billing information they require through dedicated account teams. This also provides the customer with more flexibility in the information they receive. Vodafone in addition has numerous examples of large organisations exercising their buying power and withholding payment through its 'Debt in Query' processes when errors are made with their billing. In such instances TMBS offers nothing which the large business is not able to negotiate upon its own terms. A large business customer is typically uninterested in TMBS as the service levels it receives through dedicated account managers provides the organisation with all of the power it needs to resolve any billing issue.

Vodafone believes that the only contention for operators and audit bodies in removing large business enterprises from the scheme is the practicalities of how to distinguish those customers which meet the £50k per year mark. Vodafone believes that this should not be a mark set in stone, but rather a benchmark for the audit bodies. TMBS is not primarily a comparative scheme between operators and there should be no requirement to slavishly replicate the financial cut off mark. Rather audit bodies should

regard this dividing line in the spirit it is intended. Ofcom has chosen a financial differentiator to identify those companies able to exercise their buying power to obtain granular billing information through dedicated procurement processes. If CP A achieves this through dedicated account teams according to revenue, but CP B uses a less rigid product based definition, it should be open to both CPs to satisfy compliance provided the audit bodies are satisfied that the spirit of the Ofcom definition is being met and that the CP has a clear process for determining what is or isn't to be included.

We believe that this exclusion should extend to medium sized enterprises for exactly the same reasoning.

Removal of wholesale services.

Vodafone believes that the issue of whether or not it is possible to meet the accuracy and tolerance levels for wholesale services is irrelevant. It is our view that there is no legal basis for the inclusion of wholesale service under GC11.1. The GC applies to the provision of accurate bills to the End-User. If the retailer is managing its suppliers correctly and exercising their undoubted buying power, there is no need to apply TMBS to the wholesale chain as a whole. Vodafone acting in its wholesale capacity is by its very nature not supplying the End-User, but the retailer to the End-User. It is the retailer who is required to comply with GC11 and provide the End-User with an accurate bill.

Obviously the role of the wholesaler is integral to the delivery of service and accurate billing to the End-User, but it is ultimately up to the retailer to manage that relationship and thereby to ensure its compliance. Vodafone as a wholesaler takes its responsibilities in providing accurate billing to its wholesale partners very seriously, but TMBS adds little in practical terms to the relationship. The retailers currently covered by TMBS have revenues in excess of £40m and consequently considerable buying power to exercise. They also have dedicated interconnect billing teams which can and do thoroughly manage the billing relationship between the wholesaler and retailer. In the event of billing disputes the retailer has the ability to flex its commercial power, dedicated account and often billing resource to interface with the reseller and ultimately the ability to take a dispute to Ofcom. Vodafone does not believe that TMBS in this scenario offers any additional protection to either retailer or End-User, nor does it drive the behaviour of the wholesaler in any way which commercial management would not also achieve.

In light of the dubious legal grounds and lack of tangible benefit arising from inclusion Vodafone agrees that wholesale services should be removed from the scope of TMBS.

Annex 1: 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.

Yes, we agree with the continuation of the scheme for fixed and mobile voice service. We have commented above in relation to our views on the business segments which should be included as part of the scheme. We acknowledge that the objectives of the scheme reflect best practice and are of benefit in the consumer market.

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 acknowledge the lack of evidence to justify mandating the inclusion of data services.

Vodafone is interested to understand what Ofcom means by “encouraging” the adoption of voluntary measures. Short of the industry receiving penalties or individual companies being subject to investigation it is difficult to see how the industry may be encouraged to take up voluntary annexes, particularly when failure to meet the criteria will attract audit corrective action and industry publicity, but non-participation goes unquestioned. CPs willingness to face this dilemma is evidenced by the lack of take up to date.

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.

Common practice within the industry appears to be not to charge in the event of burst bundles. If this changes the opportunity for consumer harm then it is likely to require Ofcom to intervene in accordance with GC11.3.

The effect of accurate (or otherwise) data billing will increasingly become apparent as the market continues to develop in this direction. In order for Ofcom to be able to react should intervention become necessary we would expect Annex D to remain unchanged. In our experience the method by which compliance is achieved is negotiated with the audit body. We believe this is a valuable mechanism to businesses which should not be altered.

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 consumers?

We note above that large businesses have the buying power to obtain all of the billing information they require through dedicated account teams. We also state that this provides a level of assurance far beyond anything that the scheme offers.

We operate a “debt in query” process which provides all of our business customers with access to a billing accuracy query team and the ability for them to withhold disputed payments.

Vodafone is also aware of a third-party agency which seeks to provide rate checking audits to large organisations funded by an agreed percentage of any recouped losses. Such arrangements strengthen even further the power of businesses to ensure billing accuracy from their chosen provider.

Question 5: Do you agree that with the proposal that error rates and tolerances set in the Direction should not apply in respect of large businesses? What requirements should apply in the absence of error rates and tolerances, if any?

We agree that the current error rates and tolerances are not applicable to large businesses and consider that CPs should be free to work with their Approval Body as they see fit if they wish develop existing internal KPI measures. A record of the type of existing agreements and measures in place with large business enterprises could be documented within the Measurement Strategy should a CP wish to explicitly demonstrate the steps it employs to comply with GC11.1.

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.

A spend in excess of £50k is appropriate as a guide only. As in our response to question 5, we consider that it may be more relevant to negotiate this with the Approval Body and document this agreement within the Measurement Strategy.

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.

The current scheme could be considered to have reduced the retailing reseller’s incentives to manage their supplier or to protect themselves through contractual terms

addressing aged charges. This ability is within the gift of any commercial negotiation and Vodafone has evidence of a recently signed voice interconnect agreement which has detailed third party processes for resolving billing disputes. It is wrong to suggest that downstream CPs are not able to protect themselves contractually, nor that they do not have the ability as a fall-back to seek Ofcom's intervention. Competition and buying power offers the retailing reseller the mechanism by which to ensure they are able to ensure their own compliance with GC 11.1.

We do not believe there to be any tangible evidence of consumer benefit from the current TMBS wholesale arrangements, outside of that to which retail resellers can already avail themselves which would justify the regulatory burden of the continued inclusion of wholesale provisions.

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 Direction, and specifically the approval bodies, should support retailing resellers in their attempts to gain accreditation and where compliance is undermined by clear evidence of wholesale failings seek to assist the reseller / wholesale relationship. It is not in either the wholesaler's nor the reseller's interest to have a dysfunctional billing arrangement, but the current arrangements have proven to be unworkable in practice and have added nothing to improve the accuracy of billing to the End-User. Ultimately effective competition and buying power will provide reseller protection with Ofcom's intervention a fallback protection. Even with the current failings of the wholesale measures Vodafone is not aware of any issue requiring Ofcom to intervene formally. We believe this demonstrates that the industry and Ofcom are able to work together to meet compliance with GC11.1 without specific wholesale inclusion within TMBS.

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

As in the 2003 version of the Direction, there could usefully be statements regarding third party / sub-contractor performance. Whilst not legally binding these would allow CPs to more effectively call into force the regulatory requirements when sourcing suppliers through reference in their contractual agreements.