

Three
Star House
20 Grenfell Road
Maidenhead
SL6 1EH
United Kingdom

T +44(0)1628 765000
F +44(0)1628 765001
www.three.co.uk



Tim Gilfedder
Floor 3
Strategy, Chief Economics and Technology Group
Riverside House
2A Southwark Bridge Road
London
SE1 9HA

NON-CONFIDENTIAL

20 February 2013

Dear Tim

Ofcom's consultation regarding emergency call handling agent performance (the "Consultation") - Proposed guidelines with respect to the handling of emergency calls and compliance by communication providers with General Condition 4 published 12 December 2012 (the "Guidelines")

Hutchison 3G UK Limited ("Three") welcomes the opportunity to respond to the Consultation. Three supports Ofcom's objectives regarding access to the emergency services, and we appreciate the importance of this area both to consumers and industry.

Three takes the provision of emergency services extremely seriously and, like Ofcom, believes the service currently provided by the emergency call handling agents ("CHAs") serves consumers well. However, we have strong reservations about the approach that Ofcom proposes in the Consultation. In our view, Ofcom has not identified any perceived problem in the existing service provided by the CHAs that warrants further scrutiny or intrusive regulatory intervention of the nature proposed. Absent such rationale, the introduction of the Guidelines and their granularity appears at odds with Ofcom's duties and regulatory principles. Three is concerned that the proposed Guidelines increase the regulatory burden on CPs without proper justification and will therefore not provide any discernable additional benefits to consumers but instead serve only to increase costs.

Ofcom's statutory duties and regulatory principles

Ofcom's stated regulatory principles¹ include:

- Ofcom will intervene where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve.
- Ofcom will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required.
- Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.
- Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives.

¹ <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

We have considerable reservations as to whether the Consultation and Guidelines are consistent with the above. For example, Ofcom has not: a) adequately assessed the impact of regulatory action before imposing regulation upon a market; b) sufficiently identified the harm that it is trying to address; nor c) presented evidence that its proposed approach will be effective or proportionate.

Ofcom acknowledges that the current arrangements “operate effectively and efficiently in the majority of cases” (paragraph 2.22). However, the impact assessment that forms part of the Consultation (paragraphs 2.17 - 2.26) then suggests that the main justification for not maintaining the current situation is that there is a lack of documentation explicitly setting out the role of the CHA. A lack of documentation does not appear to be sufficient basis to introduce regulation, whilst maintaining Ofcom’s regulatory principle of a bias against intervention.

As Ofcom recognises, the end-to-end process of emergency calls involves a number of important stakeholders and relies on effective interaction between CPs, CHAs and Emergency Authorities (“EAs”) (paragraph 1.5). This interaction takes place in several ways, including via regular meetings of the 999/112 Liaison Committee.

Ofcom also attends these liaison meetings, and, to our knowledge, has not expressed any specific concerns regarding CHAs’ service levels or CPs’ consequent compliance with GC4. Given this level of interaction, we are surprised that, prior to publication of the Consultation, Ofcom chose to engage only with the CHAs to discuss the introduction of new Guidelines, but not Three (or, we assume the other MNOs).

Further we would note that emergency calls are an area where CPs and CHAs are well aware of the possible serious consequences if problems or errors take place, and so a high degree of commitment and cooperation is made. We have found that the 999/112 Liaison Committee is an effective mechanism for BT and other CHAs to discuss issues and concerns with the CPs and EAs and to reach timely resolutions. Before moving towards implementing Guidelines or adopting any other regulatory intervention, we urge Ofcom to reconsider whether this existing forum can be used to better achieve Ofcom’s objectives².

The General Condition regime

The fundamental approach of the European Regulatory Framework and its UK implementation is that the General Conditions set out the requirements for compliance and that CPs meet these, failing which Ofcom takes enforcement action. Where the General Conditions are inadequate to meet the consumer interest (i.e. because new challenges to the consumer interest evolve over time), Ofcom may amend them, or introduce a Special Condition. Ofcom’s duties and regulatory principles reflect this.

The current regulatory regime was adopted because of the benefits of liberalisation and the acknowledgement that a command and control regime is less supple and is inherently prone to creating barriers to innovation over time. Three is concerned that the approach espoused by the Guidelines, whereby the detailed terms of compliance are specified and micro-managed by Ofcom absent clear evidence that this is necessary and proportionate, suggests a worrying departure from the rationale of the current regime.

Ofcom is focusing on the wrong part of the 999 call-chain

Ofcom recognises that the end-to-end process of emergency calling relies on a number of parties, including the CPs, CHAs and the EAs. In the Guidelines, Ofcom acknowledges that, when major incidents affecting the emergency service as a whole occur, it is typically “the call answering time of the

² Similar forums have been used in the past to agree the introduction of SMS for 999 and 999 ‘Roaming’ (properly known as Limited Service State).

EA [that] is first to suffer” which then may have a knock on effect on CHAs (Guidelines 5.16). However, Ofcom then states that “to meet the high expectations that the public place in the overall emergency calling process, the *CHA operation* needs to be designed, implemented and managed to suitably high standards” (paragraph 1.5) [emphasis added]. We are concerned that in setting out the proposed requirements, Ofcom all but ignores the vital role that EAs must play in the successful despatch of emergency assistance. In our view, Ofcom’s intervention is aimed at the wrong part of the end-to-end process, and we urge Ofcom to do more to influence the EA level of the call chain, rather than placing additional, ineffective obligations onto the CPs under the Guidelines.

Reporting and auditing requirements

We are particularly concerned that Ofcom’s proposals regarding reporting and auditing will result in additional costs to industry, without any clear consumer benefit. The reporting that Ofcom is proposing is more extensive and granular than that already provided by BT to Three and the other MNOs, because it is anticipated that this will be provided on an operator-specific basis.

With regard to auditing, Ofcom requirements unnecessarily go beyond the current industry practice. When appointing an outsource provider to provide CHA services, a CP necessarily relies on that CHA’s expertise and knowledge to provide those services. Therefore, for example, it seems disproportionate for Ofcom to suggest that we audit BT to check that it has not placed its call centres in areas at risk of subsidence or flooding, as suggested in the proposed Guidelines 5.12.

Should Ofcom proceed to introduce the Guidelines as proposed, Ofcom should provide greater clarity about its expectations for both auditing and reporting. As currently drafted, it appears that meeting these new requirements will cause significant further costs to be incurred by BT and other CHAs, and these in turn which will be passed down to consumers. However, it is not clear that having this added complexity in the reporting and auditing processes will serve in any way to improve the service that BT is providing.

Finally, as BT is now the only CHA for mobile providers perhaps a more pragmatic solution would be for BT, acting as CHA, to report its figures directly to Ofcom, and we note that Ofcom proposes voluntary quarterly reporting by CHAs (Guidelines 5.19 and 5.20). We would note however, that reporting is prepared by BT for the 999/112 Liaison Committee, and Ofcom already receives reports from the CHAs from its participation in that forum.

The proposed service levels

Three’s understanding is that the specific SLAs proposed in the Guidelines, namely, call answering performance target of 95% within five seconds (Guidelines 5.4) and service availability target of 99.999% (Guidelines 5.5) are almost universally met by BT. For example, [3<]³. As a result, we have no specific comments regarding these service levels themselves, however, given that they are already encapsulated in the PECS code and are routinely met, we urge Ofcom to reconsider whether it is necessary or effective to enshrine them in the Guidelines.

BT’s position as the only CHA used by MNOs

As noted above, Three’s CHA is BT. We understand that each of the other MNOs also uses BT as their CHA. It follows that BT is the monopoly provider of CHA services to all the MNOs in the UK. This is significant for two reasons.

First, the nature of the CHA services is defined by BT, not the MNOs. The provision of these services is contracted for under Schedule 225 to BT’s Standard Interconnect Agreement (the “SIA”). As Ofcom is

³ [3<]

aware, the SIA is not an ordinary bilaterally negotiated commercial agreement; changes can generally only be agreed in industry-wide two-yearly contract review periods and subject to BT's agreement. However, the requirements that Ofcom is proposing in the Guidelines are not contractually provided for in Schedule 225 of the SIA. Were Ofcom to pursue adoption of the proposed Guidelines it would be essential for Ofcom to open a dialogue with BT to ensure that the SIA was amended, absent which Ofcom would be placing the MNOs' compliance with the Guidelines in the hands of BT.

Second, the charges for CHA services under the SIA are determined by BT. While it is the MNOs that are under a regulatory obligation to provide access to emergency services under GC4, the service that Ofcom is proposing to further regulate is provided by BT – the charges for which it determines from a monopoly position. Given that Ofcom's proposed Guidelines will inevitably introduce further costs (e.g. reporting and auditing on an individual CP basis) and that these will be passed on to some extent to consumers, Ofcom must consider the merit of regulating CHA charges. Imposing obligations on what MNOs purchase without regulating the terms on which this is provided would be to introduce a significant lacuna in the rationale of Ofcom's intervention.

Conclusion

Three and its CHA provider are both highly aware of the need to provide robust and reliable emergency services, and this is evidenced by Ofcom's own findings regarding their current provision. While Three would wholeheartedly support regulation were it necessary and proportionate to achieve an improvement in consumer protection in this area, we are concerned Ofcom's proposed Guidelines do not serve this purpose. Three already perceives examples whereby the formal regulatory regime has become outmoded where it has specified detailed regulation in areas that evolve over time and where this now hinders the emergence of improvements and innovations unforeseeable at the time. We are concerned that the Guidelines risk creating another example.

More specifically, the proposed Guidelines will introduce complicated and onerous reporting and audit requirements - and associated costs. Viewed in the round, we do not believe the introduction of the Guidelines would be a good use of Ofcom's finite resources, and that these would better directed at areas where clear there is a clear need for regulatory intervention to further the interests of consumers, such as reform of switching (to increase effective choice and competition), non-geographic numbering (to increase transparency) and administrative incentive pricing for spectrum (to ensure its efficient use and that public resources employed by businesses are appropriately paid for). We therefore urge Ofcom to seek out more effective means of addressing any perceived problems in the emergency calls chain, and to reconsider the option of maintaining the current situation.

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

Yours sincerely



Xavier Mooyaart
Head of Legal – Regulatory and Competition