



# Amendment to the Statement of Charging Principles

Definition of Relevant Activity

Consultation

Publication date: 28 February 2011

Closing Date for Responses: 28 March 2011



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# Consultation

- 1.1 Under section 38 of the Communications Act 2003 (“the Act”), Ofcom may require providers of electronic communications networks and services to pay administrative charges. In doing so, Ofcom is required to designate those providers which will be subject to charges and to publish a statement of charging principles setting out how Ofcom is proposing to apply charges to them.
- 1.2 On 31 March 2005<sup>1</sup>, Ofcom issued a statement on the designation of providers and relevant activity guidelines under section 38 of the Act (“the Designation”). The Designation set out that any provider of an electronic communications network, electronic communications service or associated facility which had turnover from “relevant activities” in excess of £5 million per year as a person subject to administrative charges<sup>2</sup>.
- 1.3 The Designation also set out guidelines on the definition of relevant activity. The Designation defines relevant activity as:
- the provision of electronic communication services to third parties;
  - the provision of electronic communication networks, electronic communication services and network access to communication providers; or
  - the making available of associated facilities to communication providers.
- 1.4 Ofcom set out in the Designation the reasoning behind its approach to the definition of relevant activity. In particular, Ofcom was of the view that the definition finally adopted was necessary in order to reduce confusion and cost which might result from a definition which referred the provision of public electronic communications services to end users.
- 1.5 Ofcom had previously published, on 8 February 2005 its Statement of Charging Principles<sup>3</sup> setting out the principles which apply to the imposition of charges on those subject to the Designation. The Statement of Charging Principles also defines relevant activity. However, in the Statement of Charging Principles, relevant activity is defined as:
- the provision of Public Electronic Communications Services to end-users; or
  - the provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers; and/or the making available of Associated Facilities to Communications Providers.
- 1.6 Consequently, it has come to Ofcom’s attention that there is an inconsistency between the Designation and the Statement of Charging Principles in the definition of relevant activity. Ofcom is concerned that this inconsistency may give rise to

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/designation/statement/statement.pdf>

<sup>2</sup> Full details are set out in the notification at Annex 1 to the Designation.

<sup>3</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

confusion for stakeholders in assessing whether they are subject to the requirement to pay administrative charges to Ofcom and in calculating the amounts due<sup>4</sup>. Furthermore, the definition contained in the Statement of Charging Principles is inconsistent with the reasoning adopted by Ofcom in making the Designation.

- 1.7 Ofcom is therefore proposing to amend the definition of Relevant Activity in section 4 of the Statement of Charging Principles to align it with the Designation.
- 1.8 To ensure that stakeholders are able to comment, Ofcom is now consulting on its proposals to update the Statement of Charging Principles. Ofcom is allowing one month for responses in accordance with Ofcom's consultation principles. This matter has been consulted on previously and the proposed change is a limited amendment to ensure consistency rather than a substantive change to the policy.

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<sup>4</sup> The definition of relevant activity is used to determine how much relevant turnover a stakeholder has generated and administrative charges are calculated as a percentage of that relevant turnover.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on 28 March 2011.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/statement-charging-principles/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [Katrien.Vandersteene@ofcom.org.uk](mailto:Katrien.Vandersteene@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Katrien Vandersteene
- Dept: Finance  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7783 4901
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 When submitting your response it would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Katrien Vandersteene on 020 7981 3728

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement before the end of March 2011.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

- A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

- A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

- A2.3 We will be clear about who we are consulting, why, on what questions and for how long.
- A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.
- A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

- A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.



## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)