



Topcomm Review

Quality of Customer
service Review

Statement

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Section 1

Executive Summary

The outline of this statement

- 1.1 In May 2009, Ofcom published a consultation ('The May Consultation')¹ to ask stakeholders if the Topcomm Direction had achieved the objectives originally set when the regulation was introduced in January 2005. The original objectives were that consumers should be provided with information that is relevant, accessible, accurate, comparable, transparent and provided in a timely manner.
- 1.2 In the May Consultation, we set out our view that, based on the evidence available the original objectives set out in January 2005 were not achieved by the Topcomm Direction. In addition, we pointed to evidence that suggested that the Topcomm Direction incurred significant costs on CPs (Communications Providers), caught by the Direction, which due to the lack of tangible benefits for consumers could not be justified.
- 1.3 Ofcom therefore presented three options for the future of the Topcomm scheme. These were:
 - a) Maintain the Topcomm Direction unmodified;
 - b) Introduce modifications to the Topcomm scheme; or
 - c) Withdraw the Topcomm Direction.
- 1.4 All of the respondents agreed with Ofcom's view that the Topcomm Direction had not achieved the original objectives and the majority of the responses, all CPs, agreed that it was, therefore, appropriate to withdraw the Topcomm Direction immediately.
- 1.5 However, some respondents, whilst recognising the weaknesses of the current Topcomm scheme, did not think it was appropriate to withdraw the Direction at this time. One stakeholder suggested that modifications could be introduced to the scheme to make it more effective. Other stakeholders suggested that the Topcomm Direction should be maintained until a new quality of service ('QoS') scheme was agreed and introduced.
- 1.6 Having considered all responses provided by stakeholders, Ofcom has concluded that option 3, the immediate withdrawal, is the most appropriate course of action.
- 1.7 We do not consider the introduction of modifications as appropriate at this time. We believe that it would be disproportionate to incur the significant cost (in terms of time, money and effort) of amending the scheme given that currently there still is uncertainty about the scale of the problem with respect to quality of customer service and the metrics that consumers value. Attempts at modifying the scheme would also take time and resources that cannot currently be justified. For example, the modification of the current metrics is likely to take a number of months to conclude. We consider that this time would be better spent understanding consumers' genuine QoS information needs through our policy re-evaluation.

¹ <http://www.ofcom.org.uk/consult/condocs/topcomm/topcomm.pdf>

- 1.8 Efforts to raise awareness through a media campaign, whilst potentially being a sensible way of raising awareness, cannot be justified at this time. There is a risk that money and time would be invested in promoting a scheme that would be likely to change significantly following the conclusion of our policy re-valuation. Not only would money be wasted but the credibility of a future scheme would be undermined if a scheme was heavily promoted only to be changed again in the short to medium term.
- 1.9 Finally, we do not consider it proportionate to delay the withdrawal of the Topcomm Direction until a future scheme might be agreed. It may be some time before our QoS policy re-evaluation is complete and in the meantime, CPs would still need to incur the costs of running a scheme we consider does not to produce measurable benefits to consumers. It is entirely possible that the nature and membership of future schemes will not resemble the current Topcomm scheme so there is limited value in keeping the current arrangements intact.
- 1.10 This statement sets out our reasons for our conclusion to withdraw the Topcomm Direction in more detail and explains our next steps.

Section 2

Introduction

What was the purpose of the May Consultation and of this statement?

- 2.1 The May Consultation was run to seek stakeholders' views on whether the Topcomm scheme did indeed achieve the policy objectives that were first envisaged when the Topcomm Direction was introduced in 2005.
- 2.2 This question was prompted by evidence that emerged during a previous consultation, run in July 2008 ('the July 2008 Consultation')², which considered Ofcom's wider approach to the provision of QoS³ information.
- 2.3 The July 2008 Consultation generated two workstreams:
- (a) **A re-evaluation of our policy aims with respect to the provision of comparable QoS information to consumers.** The current evidence, (including the research published in January 2009⁴), on this issue is inconclusive and Ofcom intends to conduct further research to understand whether such information, if it is found to be beneficial to consumers, could be provided to consumers on an ongoing basis perhaps under future regulatory requirements.
- This workstream is likely to continue for the next few months and will continue to engage with stakeholders on the progress being made. Once we are in a position to consider the outcomes of this project, we are likely to hold further consultations that will invite stakeholders to comment.
- (b) **Decide on the immediate future of the Topcomm Direction.** The original policy aim of the Direction was to provide relevant and comparable QoS information as this was considered to be beneficial to consumers. The evidence now available, however, suggests that the current Topcomm Direction does not provide any significant benefits to consumers.
- 2.4 Workstream (b) was the main focus of the May Consultation and is the subject of this statement. The evidence that we have collected to date suggests that the current arrangements under the Topcomm scheme do not achieve the policy aims initially envisaged when the Topcomm Direction was introduced in 2005. In addition, CPs have highlighted the considerable cost to them of running the current Topcomm scheme. Therefore, Ofcom considered it appropriate to consult on what should be done with the current Topcomm Direction.
- 2.5 Even if there were to be a future scheme resulting from our re-evaluation of policy, this would not be in place for some time. As a result Ofcom took the opportunity to consult on several options with regards to the future of the Topcomm scheme, including the preferred option of withdrawing of the Topcomm Direction.

² <http://www.ofcom.org.uk/consult/condocs/qos08/qos08.pdf>

³ 'QoS' information for the purposes of this document is limited to quality of 'customer service', as does not include technical quality of service such as broadband speeds.

⁴ http://www.ofcom.org.uk/consult/condocs/qos08/provision_qos/qos.pdf

- 2.6 We have decided to withdraw the Topcomm Direction with immediate effect. We set out in this statement our reasoning for taking this course of action, including how we considered all responses to our consultation.

What is Ofcom's current approach towards consumer information?

- 2.7 We believe that consumer information plays a critical role in competitive markets. Markets work best when consumers are fully informed about what they are buying. Without this, consumers may make decisions that do not meet their needs and they may be reluctant to switch.
- 2.8 However, some consumers do not find it easy to make informed decisions and compare services. This may be because appropriate information does not exist. It might also be because the information they are presented with is complex, not easy to interpret and is located in a number of different places. Where this is the case, there may be a role for Ofcom in supporting consumers in the gathering of relevant information to help them make informed and effective choices.

What is the regulatory framework behind Ofcom's work on QoS?

- 2.9 Under section 3 (1) of the Communications Act 2003 ('the Act') Ofcom must, in carrying out its functions:
- a) further the interests of citizens in relation to communications matters; and
 - b) further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.10 Section 3 (3) sets out that in performing our duties under section 3.1, we must have regard, in all cases, to
- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - b) any other principles appearing to Ofcom to represent the best regulatory practice.
- 2.11 Section 3(5) further sets out that in performing our duties under section 3 of furthering the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 2.12 Under section 4 of the Act, we must also act in accordance with the six European Community requirements for regulation, including the requirement to promote competition in relation to the provision of electronic communications services and the requirement to promote the interests of all persons who are citizens of the European Union.
- 2.13 Ofcom also has a duty under section 6 (1) of the Act to review the carrying out of our functions to ensure that any regulation by Ofcom does not involve the maintenance of unnecessary burdens.

What is Topcomm and what objectives did it seek to achieve?

- 2.14 On 27 January 2005, Ofcom issued a Direction under General Condition 21 requiring a specified category of communication provider (fixed line voice)⁵ to capture and publish comparable information on specific aspects of QoS (the 'Topcomm Direction'⁶). The Topcomm Direction had led to the formation of Topcomm, a co-regulatory scheme under which certain providers of fixed line voice services are obliged to capture and publish QoS information for consumers and business users.
- 2.15 Ofcom's policy objective was to ensure consumers would benefit from the provision of comparable QoS information. In the regulatory statement that accompanied the Topcomm Direction, it stated in paragraphs 3.6 - 3.8:
- 3.6 *A part of Ofcom's mission is to encourage the provision of timely, relevant, accessible and accurate information to citizen-consumers and enable them to make informed purchasing decisions.*
- 3.7 *Reliable consumer information facilitates the exercise of choice by End-Users and helps them to receive the benefits of increased competition. Ofcom believes that if End-Users are to rely upon such information it needs to be accurate, accessible, and truly comparable.*
- 3.8 *Ofcom also believes that a successful co-regulatory initiative that provides adequate, timely and comparable QoS information will help to promote investment and innovation in the provision of services and will also to promote competition. All consumers should be able to take advantage of the benefits of transparent and comparable information and the competitive benefits that this should bring; this includes consumers in different parts of the UK⁷.*
- 2.16 In summary, the objective of the Topcomm Direction was to provide information to consumers that is:
- a) Relevant;
 - b) Accessible;
 - c) Accurate;
 - d) Comparable;
 - e) Transparent; and
 - f) Provided in a timely manner.

⁵ In the context of the Topcomm Direction, a 'Communications Provider' is currently defined as a person providing a Publicly Available Telephone Service by means of a Public Telephone Network at a fixed location which has at least £4 million in net revenues per quarter and 100 million minutes of calls handled to end customers.

⁶ <http://www.ofcom.org.uk/consult/condocs/qualitystate/statement/statement.pdf>

⁷ [ibid](#)

Why is Ofcom currently assessing the Topcomm scheme?

- 2.17 As the Topcomm Direction had been in force for several years, Ofcom took the opportunity during 2008 to assess the value of the current scheme to consumers and to consider if the scheme could be improved.
- 2.18 Ofcom published an initial consultation in July 2008 ('the July 2008 Consultation') which was intended to gather stakeholders' views on the usefulness of the current Topcomm Direction but also involved asking fundamental questions about QoS information needs more generally.
- 2.19 At the same time, Ofcom conducted a substantial consumer research exercise to better understand the QoS information needs of consumers. The results of this research were published in January 2009⁸.
- 2.20 Ofcom made a number of observations on the evidence that emerged during the July 2008 Consultation process including:
- i) a fairly widespread consensus from stakeholders that the Topcomm scheme was not fit for purpose. Responses, including those from consumer stakeholders, suggested the current arrangements for presenting performance data were not helpful for consumers and would require significant reform to be useful;
 - ii) low usage of the Topcomm website, around 1000 visits each week. When compared to the millions of hits generated by price comparison sites such as Uswitch and Moneysupermarket, the site's popularity appeared very low indeed;
 - iii) the Topcomm scheme's high running costs. Despite such low usage of the Topcomm website, the scheme generated significant annual running costs for those operators bound by it⁹. The indicative costs based on the evidence available at the time suggested that the upper bound costs for participating in the current scheme are between £19,000 and £37,000 per year per member. Based on 18 members (membership as of July 2009), this would equate to between £342,000 and £666,000 per year across industry¹⁰.
- 2.21 In light of the emergence of this evidence, Ofcom decided to undertake two workstreams:
- a) A re-evaluation of our policy aims with respect to the provision of comparable QoS information to consumers: and
 - b) Consult on the immediate approach to the Topcomm Direction.
- 2.22 Workstream (a) is underway and more information on this is set out under section 4.
- 2.23 Workstream (b) was the subject of the May Consultation and is concluded with this statement.

⁸ http://www.ofcom.org.uk/consult/condocs/qos08/provision_qos/qos.pdf

⁹ Under the current Direction only CPs providing Publicly Available Telephone Services by means of a Public Telephone Network at a fixed location with at least £4 million in net revenues per quarter and 100 million minutes of calls handled to End-Users per quarter have to comply with the requirements set out the Direction.

¹⁰ These costs estimates are set out in detail in the annex to the May Consultation.

What options did Ofcom present in the May Consultation?

2.24 The May Consultation set out three options on how to take the Topcomm scheme forward. These were:

- a) **Option 1 - Maintain the Topcomm Direction.** Under this option, Ofcom would maintain the Topcomm Direction in its current form.
- b) **Option 2 - Introduce some modifications to the Topcomm scheme.** Under this option, Ofcom would maintain the current Topcomm Direction in principle but modify the scheme to address some of the deficiencies.
- c) **Option 3 - Withdraw the Topcomm Direction.** This option would result in withdrawing the Topcomm Direction as soon as possible without waiting for the completion of our policy re-evaluation.

2.25 In the May Consultation, we set out our initial view, that we considered that:

- i) the Topcomm Direction did not meet the original policy objectives and, thus, did not deliver value to consumers,
- ii) those CPs bound by it faced significant running costs and
- iii) those modifications to the scheme which could be made immediately would not remedy existing deficiencies.

Thus, our preferred option was to withdraw the Topcomm Direction with immediate effect.

2.26 When considering this preferred option, we set out why we thought the proposed withdrawal met the relevant tests set out in the Communications Act 2003 ('the Act'). In particular, section 49 (2) of the Act requires us in respect of any proposed withdrawal of a Direction issued under a General Condition, to be satisfied that to withdraw such a Direction is:

- a) objectively justifiable;
- b) not such as to discriminate unduly against particular persons or against a particular descriptions of persons;
- c) proportionate to what is intended to achieve; and
- d) in relation to what it is intended to achieve, transparent.

2.27 Section 5 of the May Consultation set out how our preferred option satisfied these four tests under section 49 of the Act.

2.28 The following section will consider stakeholders' responses to the May Consultation and explain how we have reached our decision to withdraw the Topcomm Direction.

Section 3

Responses to the May Consultation and explanation of Ofcom's decision

Purpose of this section

- 3.1 This section will re-visit the policy options, presented in the May Consultation, in light of the consultation responses received back from stakeholders and set out why we are withdrawing the Topcomm Direction at this time.
- 3.2 We will also discuss why we consider that the option of withdrawing the Topcomm Direction meets the test set out in the Act.

Who responded to the May Consultation?

- 3.3 There were a total of 19 responses to this consultation.¹¹
- 3.4 There were 11 responses from current Topcomm members; 2 from consumer stakeholders; 1 from the current comparability auditor and 1 from the current Topcomm secretariat. The Topcomm forum (Topcomm members not including the secretariat) itself provided a response as well as UKCTA. A full list of non-confidential responses is listed in the annex and all non-confidential responses can be found on the Ofcom website¹².
- 3.5 In most cases, the responses were relatively brief and focussed on the single question in hand. However, some stakeholders took the opportunity to express their views on the wider issues surrounding the provision of QoS information e.g. what they considered should be included in a future QoS scheme. Whilst we acknowledge the views expressed in these responses, we intend to limit our consideration in this statement to responses to the specific question asked in the May Consultation, i.e. is the Topcomm Direction achieving its objectives. However, we will consider the other views in the context of our wider policy re-evaluation.

Does the current scheme achieve the objectives that were set when the Topcomm Direction was introduced?

- 3.6 The view from all of the stakeholders, including the two representing consumers, is that the scheme is not providing useful information to consumers and is not therefore delivering the objectives set out when it was introduced.
- 3.7 A number of stakeholders, including all CPs, support the proposal to withdraw the Topcomm Direction now. These are Alternative Networks, BT, Cable and Wireless, Colt, Kingston Communications, Post Office Limited, Scottish and Southern, Tiscali,

¹¹ Due to a technical error, consultation responses submitted via our webform facility did not reach us during the consultation period. However, Ofcom sent an email update to all members of our telecoms stakeholder list on 25 June 2009 and published an up-date on our webpage explaining that the webform had not worked due to a technical error and invited respondents to resubmit any responses to us. Several stakeholders took the opportunity to re-submit their responses which have since been considered for this statement.

¹² www.ofcom.org.uk/consult/condoc/topcomm/responses

Verizon, Tesco, Thus and two other CPs who preferred to keep their responses confidential.

- 3.8 A number of these CPs, including BT, Tiscali and Post Office Limited, took the opportunity to express their support for some form of scheme or initiative to provide QoS information to consumers if shown to be necessary. However, they are of the view that the current Topcomm scheme does not provide relevant information or that there is sufficient evidence at the moment to suggest that intervention of this kind is necessary.
- 3.9 Several current Topcomm members including Alternative Networks, Cable and Wireless, Colt and Verizon suggest that the Topcomm Direction is particularly ineffectual and burdensome to them as most of their client bases were composed of business customers. They argue that business customers, particularly large corporate clients, do not find such information useful and suggest that business customers of a certain size were more likely to negotiate their own individual service level agreements that were specific to each client's particular wishes.
- 3.10 Consumer stakeholders also agree that the Topcomm Direction is not fulfilling the objectives originally set out. Consumer Focus and Citizens Advice both agree that the Topcomm Direction does not meet the original purpose set out at the time the regulation was introduced. They also suggest that the 'status quo' is not a desirable option and some form of action is necessary.
- 3.11 However, neither Consumer Focus nor Citizens Advice agree that the Topcomm Direction should necessarily be withdrawn at this time. They both suggest that Ofcom should agree the detail of a new scheme first, before the Topcomm Direction is withdrawn. Their arguments for maintaining the Topcomm Direction are set out later in this section.
- 3.12 In summary, all stakeholders, who responded, agree with Ofcom's view that the Topcomm Direction does not meet its original policy objectives. No stakeholders express the view that the current Topcomm scheme is delivering the objectives that were set out when the Topcomm Direction was introduced.

What is Ofcom's assessment of whether the Topcomm Direction achieves the objectives that were set out when it was introduced?

- 3.13 The original policy objectives envisaged when the scheme was introduced are set out above at paragraph 2.15. In summary, QoS information presented to consumers should be relevant, accessible, accurate, comparable, transparent and provided in a timely manner.
- 3.14 We will consider below the extent to which the Topcomm scheme achieved each of these objectives.

Relevant

- 3.15 The key question to consider here is the extent to which the information generated by the Topcomm scheme is relevant to consumers i.e. whether consumers are able to process and understand the information and it covers the metrics that consumers value. If the information is not relevant, it does not matter how well the information is audited or how many people see it, it will provide little benefit to consumers.

- 3.16 Stakeholders, including those representing consumers, do not believe consumers are able to process and understand the information provided by the scheme. They also question whether it covers the metrics that consumers value and they suggested there was a need to reconsider what information consumers find helpful. Consumer Focus argued that some of the metrics needed to be replaced whilst others needed to be amended or were of limited value. They also suggested there was a need to review the metrics to identify the issues that are relevant to consumers. Citizen's Advice suggested some vital metrics are not included in the scheme and there is a need to reconsider what information consumers find helpful.
- 3.17 The qualitative and quantitative research we carried out last year pointed to a number of QoS issues that are of interest to consumers in relation to network and customer services. Two key areas of interest identified in both pieces of research were the ease of getting help and whether you have to pay for help/support. The qualitative research also suggested consumers are interested in:
- (a) ease of ability to have a meaningful conversation with the member of staff (e.g. easy to understand, asking the right questions/ability to identify the problem, not overly scripted);
 - (b) keeping promises (e.g. phoning back when they say they will, doing what they said they would without the need to chase);
 - (c) being proactive (e.g. offering call back option rather than queue, compensation for faults/downtime, redirecting calls to a mobile phone);
 - (d) and quality of billing (e.g. whether correct and on time, clearly laid out/transparent).
- 3.18 The quantitative research identified line reliability and call quality as the most important aspects of QoS when choosing a supplier in this sector. The third most important factor identified was speed of repairing faults. The research suggested that the time taken to restore faults was more likely to be used than the number of faults per thousand customers.
- 3.19 The research we have undertaken above suggests that there are important aspects of quality of service information that consumers would value but are not covered under the Topcomm scheme. For example, the ease of getting help and the costs of helplines. We believe further work is required as part of our policy re-evaluation to better understand the metrics that consumers value and how this can be presented to make it meaningful and easy to understand. .

Accurate and comparable

- 3.20 A further requirement of any information presented to consumers is that it should be accurate and comparable between CPs. However, the available evidence suggests that the CP led arrangements for the auditing of Topcomm information is flawed to the extent that it cannot be guaranteed that the information is accurate or comparable.
- 3.21 As highlighted above at paragraph 3.15, problems also exist in the presentation of the information that has been collected. Feedback from stakeholders, suggests that the use of certain metrics makes it very difficult for consumers to make comparisons between CPs on certain time based parameters. We consider both of these issues below.

There are weaknesses in the methods used to audit the collection of CPs' information

- 3.22 The current processes used to check for accuracy and comparability of the data supplied by CPs cast doubt over the scheme's ability to achieve genuine accuracy and comparability. Evidence collected through responses to the July 2008 Consultation suggested that the current auditing arrangements do not achieve the goal of ensuring the provision of accurate and comparable QoS information¹³.
- 3.23 The initial trial publication period for Topcomm in 2005 and the first couple of publications had a combined accuracy\comparability failure rate ranging between 8 & 13%. The failure rate was then relatively balanced at around 4%, which had appeared to be a normal expectation until the Q3/4 2008 data submissions. The combined accuracy\comparability failure rate for Q3 & Q4 2008 is 16% and 14% respectively¹⁴.
- 3.24 The weaknesses identified in the audit process could be summarised as follows:
- a) The internal audits were often carried out by individuals who were not necessarily qualified. The only requirement, expected by the forum, is that internal auditors should sit an online test that was not subject to any independent invigilation.
 - b) There was too much scope for providers to limit the frequency of internal and external audits.
 - c) Internal and external audits did not necessarily include site visits to geographical locations where significant proportions of providers' service events were processed. There would be significant costs incurred on CPs who had operations overseas.
 - d) The appointment of the comparability auditor was made by the forum without any independent validation. Although there was no evidence to suggest this was necessarily a problem, the current process contained no safeguards against the risk of a conflict of interest.
- 3.25 In addition to these weaknesses in the auditing process, there are also flaws in the way information is presented to consumers. A number of stakeholders, including those representing consumers, suggest that the metrics used to present information to consumers do not allow easy comparisons between CPs because, for example, performance is measured against each CP's own individual targets instead of a common industry target.
- 3.26 The use of these specific metrics makes it extremely difficult for consumers to make comparisons between CPs and is a major reason for the Topcomm scheme failing to achieve its original objective of providing information that is comparable.
- 3.27 The evidence provided by a range of stakeholders suggests that the current auditing processes are not sufficiently robust to provide genuinely accurate and comparable data. The use of certain metrics in the presentation of information does not enable easy comparison between CPs. Given that a key policy objective was to provide

¹³ <http://www.ofcom.org.uk/consult/condocs/qos08/qos08.pdf>

Section 6.

¹⁴ Traqs suggested, in their consultation response, that this trend has largely been down to the lack of CP consistency in auditing overseas centres.

information that was accurate and comparable, there is a strong possibility that the current scheme's arrangements have contributed to a failure to achieve these policy goals.

Accessible / Transparent

- 3.28 Under the Topcomm scheme, information on CP performance is presented on an open website (www.topcomm.org.uk) and available to any person who wishes to see it free of charge. In order that its website is accessible and inclusive to all users, the website was designed and built to follow guidelines laid down by the W3C Web Accessibility Initiative (WAI) and Royal National Institute for the Blind (RNIB). Information was also available, on request, in paper format.
- 3.29 To a certain extent, the scheme has therefore met the accessibility/transparency objectives as, in theory, anyone can access it and is transparent to anyone who has web access. However, the limited use of the Topcomm website and scheme generally, raise questions on the true extent of transparency and accessibility.
- 3.30 There are currently around 1000 visits to the Topcomm website each week. When compared to the millions of hits generated by price comparison sites such as Uswitch and Moneysupermarket, the site's popularity appears very low indeed.
- 3.31 Ofcom's view is that the low number of visits to the website is likely to be, in large part, due to a lack of awareness about the Topcomm website. There has not been any significant promotion of the Topcomm scheme either by scheme members, Ofcom or third parties (price comparison sites etc). So it is reasonable to assume that consumers simply are not aware of the scheme.
- 3.32 The low levels of consumer awareness and usage of the Topcomm website have restricted the opportunity for the Topcomm Direction to achieve its original purpose of providing accessible and transparent QoS information to consumers. There is no justification for spending money on consumer awareness given the other concerns over the scheme.

Timely information

- 3.33 Under the current scheme, information is published on the Topcomm website every six months. Each publication includes two sets of quarterly data.
- 3.34 As set out above, the information is independently verified by an auditor, chosen by the Forum members. Most internal audits are conducted within a few weeks after the end of each quarter and reports are submitted for comparability by the auditor about six weeks after each quarter. Following the completion of all checks, data is published around four months after the end of the second quarterly reporting period.
- 3.35 In practice, this means information is published up to 7 months after the first set of quarterly data has been collected. Consumer Focus suggest that information should be published much sooner than this, ideally no more than one or two months after the end of the reporting period as otherwise the data will be out of date by the time it is published¹⁵.

¹⁵ Answer to question 58 of July 2008 Consultation response.
<http://www.ofcom.org.uk/consult/condocs/topcomm/responses/consumer.pdf>

- 3.36 It would appear that consumer groups would have a preference for providing information to consumers soon after as it has been captured. This seems a fairly reasonable objective. However, we do not have any evidence available to help us determine if QoS information necessarily has a ‘shelf life’ and must be published within a specified time period of time or what that time period is. We will consider this question in the context of the wider policy re-evaluation.

Summary of assessment

- 3.37 It is not clear that the Topcomm scheme uses metrics that consumers value or in a way that consumers can process and understand. Consumer groups have suggested that the information provided by Topcomm is not relevant to consumers and should be reviewed. The wider QoS research we have undertaken does not currently provide us with much certainty that the metrics used by the scheme are the most relevant ones. We are keen that this uncertainty is addressed in our policy re-evaluation.
- 3.38 However, we are clear that the scheme’s use of certain metrics, based on CPS’ own SLAs, makes it difficult for consumers to understand and allow meaningful comparisons. It is also obvious that low use and awareness of the Topcomm website undermine the accessibility and transparency of the scheme. Finally, the current auditing processes do not provide assurances that information captured by CPs is truly accurate and comparable.
- 3.39 We discuss below the implications of this assessment and consider the views expressed by stakeholders on the future of the Topcomm Direction.

The arguments presented by some stakeholders for retaining and/or modifying the Topcomm Direction

- 3.40 Despite the consensus among stakeholders that the Topcomm Direction is not meeting its original objectives several stakeholders suggest that Ofcom should not withdraw the Direction at this time. There were several different arguments put forward by stakeholders for retaining the Topcomm Direction: These were:
- a) The scheme could still meet its original policy objectives if certain modifications were introduced;
 - b) It would be more difficult for Ofcom to introduce a new scheme if the Topcomm Direction is withdrawn at this time. It would be better to keep it in place and allow Ofcom to negotiate a revised scheme that would provide genuinely comparative QoS information to consumers;
 - c) It would be inefficient to withdraw the Topcomm Direction now, only for a new scheme, resembling Topcomm, to be introduced again from scratch at some point in the future.

We shall explore these arguments further below.

The Topcomm Direction should remain but the scheme modified

- 3.41 Traqs, a company who is currently responsible for carrying out the comparability audits for the Topcomm Forum, suggested that relatively small modifications to the scheme would provide better QoS information to consumers.

3.42 The three recommended areas of modification are set out below.

(a) Reduce the parameters and revise the metrics

Reduce the five current parameters to three, so that only data on service provisioning, fault restoration and complaint handling are required to be captured and published. They also advise introducing a standard average time for each of the metrics so that they are more comparable (average time instead of individual target). For example, instead of presenting how well a CP performed in repairing a fault against its own service level agreement (SLA), the CP would present the average repair time in days so that comparisons could easily be made across CPs.

Traqs also argue that the costs associated with revising these metrics were not as significant as those estimates described in the May Consultation. They suggest that the costs of capturing data on at least three of the time based measures (service provision, faults and complaints) would remain the same and the only modification would be the change from target to actual time, which would take a reporting analyst a matter of minutes to change.

(b) Reform the auditing process

Reduce the problems associated with the robustness of the comparability auditing, by inviting Ofcom to take a greater role in defining the auditing process and requirements rather than leaving it up to the discretion of Topcomm members; and

(c) Increase awareness

Increase awareness of the information available by creating a new website that would house the data and encourage Ofcom to direct substantial resources at promoting it.

3.43 In the following paragraphs we consider these arguments in more detail.

Revise the current metrics

3.44 It is suggested that the costs associated with revising the current metrics, so that they present information on the standard average time for each of the parameters, would be minimal. This is not necessarily a view shared by some industry members, who have told us previously that changing the metrics would be more costly¹⁶. However, even if we were to assume that changing the metrics was relatively inexpensive, we do not consider that such a modification would necessarily help achieve the scheme's original policy objectives. We do not know what the most appropriate and relevant metrics are and consider that these need to be tested further in the policy re-evaluation.

3.45 If modifications were to be introduced, there is no way at present to say with a sufficient degree of certainty what metrics consumers would value. This is likely to be better understood once Ofcom's policy re-evaluation has been concluded over the coming months.

¹⁶ BT suggested in their response to the July Consultation that the costs of revising each metric would be approximately £3,000 to £10,000. See answers to questions 16 to 27.
<http://www.ofcom.org.uk/consult/condocs/qos08/responses/bt.pdf>

- 3.46 What is known, for certain, is that the Topcomm scheme modified or not, will continue to incur costs on those CPs caught by the Topcomm Direction. Ofcom continues to estimate that the cost of participating in the Topcomm scheme for an individual provider is between £19,000 and £37,000 a year depending on the size of the provider. Those costs are being incurred without evidence that the information being provided is actually relevant. Although modifications could be introduced to apparently make them more consumer friendly, there's no way of knowing, at present, if the information there is would be valued by consumers. Unless we are in a position to have a better understanding of what kind of QoS information is relevant, it will not be possible for us to modify the Topcomm scheme in a meaningful manner and to ensure that it meets consumers' needs.
- 3.47 A further concern with modifying the metrics is the potential time and effort required to agree or mandate the revisions. The Topcomm Direction does not contain detail as to how the metrics on each parameter should be presented to consumers. This is left to the scheme members to agree among themselves.
- 3.48 However, introducing changes to the scheme has traditionally been time consuming and difficult. This is a point recognised in Traqs' own response '*Despite feedback by auditors, consumer groups and even by individual service providers, the forum has not agreed to co-ordinate the parameters to optimise their comparability*'.
- 3.49 Even in order to make arguably low cost changes to metrics, we would require months to gather evidence and run consultations etc. We consider this time and effort would be much better focussed on re-evaluating Ofcom's policy approach to providing QoS information.

Reform the auditing process

- 3.50 Ofcom considered the weaknesses of the current auditing process in paragraphs 5.71 to 5.82 of the May Consultation and in this document at paragraph 3.22. In summary, there are a number of weaknesses in the current auditing process that undermine the scheme's ability to achieve two of the scheme's key objectives, i.e. that information is accurate and comparable.
- 3.51 We did discuss in section 6 of the July 2008 Consultation how the auditing arrangements could be improved including: increasing the frequency of audits; requiring more site visits; and insisting on more visits to more overseas destinations facilities¹⁷. Such modifications are likely to generate more costs to CPs, again with little evidence at the moment which would suggest an increase in benefit to consumers.
- 3.52 A further complication with modifying the auditing arrangements is that the Topcomm Direction provides limited scope for intervening in the detail of the auditing process under the scheme. In addition, the Topcomm Direction does not contain any formal provision to enable Ofcom to intervene and prescribe how the auditing process should be undertaken by CPs.
- 3.53 In order for Ofcom to formally intervene in the auditing process, and set specific processes and definitions, a change to the Topcomm Direction would be required. This would necessarily require further formal consultation over the coming months. We consider that resources would be better spent running the policy re-evaluation.

¹⁷ <http://www.ofcom.org.uk/consult/condocs/qos08/qos08.pdf>

- 3.54 When the policy re-evaluation has been completed, we could consider whether and, if so, how any potential future scheme could be supported through revised auditing arrangements.

Increase awareness of the Topcomm scheme

- 3.55 It has been suggested on a number of previous occasions that the scheme would benefit from further efforts to increase public awareness aimed at increasing website usage. They suggest that a new website would cost in the region of £30,000 and do not disagree with the estimated costs associated with a publicity campaign (approx. £500,000). They suggest that such costs would be a one off and would not need to be replicated once the scheme had been properly marketed.
- 3.56 Ofcom recognises that greater publicity could increase awareness of the scheme and assist to fulfil the 'accessible' criterion of the original objectives. However, we consider that there would be limited value to be gained from significant expenditure on a publicity campaign at this stage as, again, it would not necessarily meet the other policy objectives such as being relevant, accurate or comparable.
- 3.57 As mentioned in the May Consultation, there would be a huge risk to the credibility of any future scheme if the profile of the current scheme were to be raised, via an expensive publicity campaign, in the short term, only for it to be then abolished in the medium term. It would be difficult to justify the imposition of such costs, until Ofcom has completed a policy re-evaluation that would help us better understand consumers' QoS information needs.
- 3.58 We do not consider that modifications could help achieve the objectives set out for the scheme. Whilst efforts could be made to improve accessibility, accuracy and comparability, the suggested modifications would not necessarily assist in providing 'relevant' information to consumers. Further, we consider that it would be disproportionate to incur the significant cost (in terms of time, money and effort) of amending the scheme given that there is uncertainty about the metrics consumers value and the scale of the problem. We plan to address this in the policy re-evaluation.

What other arguments do stakeholders present for retaining the Topcomm Direction?

Delay the withdrawal of the Topcomm Direction until a new scheme has been agreed and implemented

- 3.59 Both consumer stakeholders (Citizens' Advice and Consumer Focus) express reservations about withdrawing the Topcomm Direction at this time. They suggest that it should be retained for the time being, at least until there is more clarity on what any future scheme might look like if one is to be put in place following further consultation. We consider their concerns below in more detail and explain why retaining the Topcomm Direction for this reason is not appropriate.
- 3.60 Ofcom used the May Consultation to mention that we were re-evaluating our policy aims with respect to the provision of comparable QoS information to consumers. We highlighted that Ofcom intends to conduct further research to better understand consumers' QoS information needs. If it is found to be beneficial to consumers, such information could be provided to consumers on an ongoing basis, perhaps as part of a future regulatory requirement.

- 3.61 Our decision to consult on the future of the Topcomm scheme in the May Consultation was a specific and more immediate workstream in the overall context of Ofcom's re-evaluation of our approach to providing consumers with QoS information. We were keen to explain that any decision of the future of the Topcomm Direction should be considered independent from the rest of the policy re-evaluation.
- 3.62 Consumer Focus and Citizens Advice both express concerns about the withdrawal of the Topcomm Direction without a new scheme in place or at least on the way.
- 3.63 They both suggest that Ofcom would find it much more difficult to negotiate the details of a new scheme when there is no scheme in place at all. This would be particularly difficult if Ofcom sought to involve mobile and broadband operators. By keeping the Topcomm Direction intact, it would provide a much stronger incentive for CPs to engage constructively with Ofcom in creating a new scheme.
- 3.64 We acknowledge consumer stakeholders' 'concerns about withdrawing the Topcomm Direction at this time. However, we do not consider it appropriate or necessary to retain the Topcomm Direction for these reasons.
- 3.65 The Topcomm Direction applies only to fixed voice services and so, any 'privileged' negotiating position would not apply to those other services such as mobile or broadband services.
- 3.66 It is also possible that a number of the CPs caught by the Topcomm Direction would not necessarily be included within any new scheme. For example, CPs who provide services mostly to business, might not be included with a future scheme. Furthermore, any future regulations, might not apply to CPs of a certain size. For example, we have discussed previously, the idea of requiring CPs of a certain size or market share to be included in future schemes.
- 3.67 As the membership of any future scheme is not necessarily going to resemble the present Topcomm scheme, any tactical advantage would be fairly limited.
- 3.68 In addition, it would not be appropriate to retain the Topcomm Direction solely on the basis that it may enable Ofcom to negotiate a future scheme more easily. Any future scheme would be justified on the merits of the argument and the underlying evidence presented at the time.

Maintain the Topcomm Direction on cost effective grounds

- 3.69 Some stakeholders request that the Topcomm Direction be retained for the time being. This is because of the potential costs associated with dismantling the QoS apparatus (personnel, systems and processes in place to collect CPs' own performance data) now, only for this or a similar scheme to be re-introduced at a later stage. This view suggests that it would be inefficient to incur costs to close certain functions down, only for them to have to introduce something similar at some point in the future.
- 3.70 We appreciate that closing down the scheme now, and introducing something similar at a future point, may not represent an efficient use of time and resources.
- 3.71 However, it is not clear if the current scheme is a particularly useful model going forward, even if we considered that a future scheme, requiring Ofcom's intervention, was appropriate. Given that future requirements might not apply to all current

Topcomm members, it is likely that some of the costs associated with dismantling the scheme would not be wasted. We base this view on the following considerations:

- a) Future requirements might not apply to current Topcomm members. For example, if the requirement to collect and publish QoS information were only to apply to CPs that provide services predominantly to larger corporate clients any decision to dismantle the QoS apparatus for these types of CPs (currently approximately nine of the current eighteen members) would not be a wasteful exercise.
- b) Future requirements might apply to CPs that are not caught by the Topcomm Direction. The reach of the Topcomm Direction is limited to those CPs that provide fixed line voice services. The research that we have done suggests that consumers are interested in knowing about a wider range of communications services. The implication is that, if a requirement for providing QoS information is established, it is just as likely to apply to providers of services including mobile voice and/or internet services. Therefore, these CPs would need to establish infrastructure from scratch anyway.

3.72 Given the uncertainties surrounding any future schemes, this decision also allows CPs flexibility in dealing with this uncertainty and allows them to make the most efficient choice. For example, providers can choose whether to maintain some elements of the system (e.g. data collection processes) until such time as Ofcom has concluded its policy re evaluation. Where the risk of set up costs (in terms of time, resource and financial costs) in the future are sufficiently large, CPs might prefer to maintain some of the elements (e.g. data collection processes) of the scheme until Ofcom has made a final decision on information on quality of customer service. Where the costs of potentially setting up the appropriate systems are relatively small compared to running costs for at least a year, providers might prefer to dismantle the different elements of the scheme and re-introduce them should the conclusion of the wider policy re-evaluation require it. This flexibility may be particularly useful given the apparent heterogeneity of costs across different size/type of suppliers.

Ofcom's view on stakeholders' responses to the consultation and 'our decision'

- 3.73 In summary, the evidence and arguments that have been presented during the consultation lead us to conclude that that the Topcomm Direction does not achieve the original objectives set out when the scheme was introduced, i.e. to provide information to consumers that is relevant, accessible, accurate, comparable, transparent and provided in a timely manner.
- 3.74 The responses received indicate that there is a broad consensus among stakeholders who hold this view.
- 3.75 Despite this consensus of opinion on the value of the Topcomm Direction (or lack thereof), some stakeholders did not agree with our preferred option of withdrawing the Topcomm Direction at this time.
- 3.76 There is limited support for retaining the Topcomm Direction and introducing modifications to the scheme. It is suggested that the costs of introducing some of these modifications would not be as significant as those detailed in the May Consultation. However, the total cost (in terms of time, money and effort) associated with modifying the Topcomm scheme are significant (estimated costs are set out at

paragraph 3.87) and we consider that it would be disproportionate to incur these costs before having completed the policy re-evaluation.

- 3.77 Suggested modifications, such as increasing publicity and revising the metrics, may assist in improving accessibility and comparability respectively but they would not necessarily assist in achieving the other objectives such as relevance.
- 3.78 Some stakeholders suggest that the Topcomm Direction should remain until the details of a future scheme are known and agreed. The current scheme may not provide a particularly useful template for future schemes. Withdrawal of the Direction allows each CP to make their own decision as to whether it is more efficient for them to dismantle their systems and processes in advance of the wider policy re-evaluation or whether it is more beneficial for them to retain their systems in place (in full or in part) until the wider policy re-evaluation is completed.
- 3.79 Based on the evidence currently available, which suggests that the Topcomm Direction in its present form does not meet its original objectives, Ofcom considers that the most appropriate decision is to withdraw the Topcomm Direction with immediate effect.

Impact assessment of preferred option

- 3.80 The following paragraphs represent Ofcom's impact assessment of withdrawing the Topcomm Direction. Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals or decisions would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, "Better policy-making: Ofcom's approach to impact assessment", which are on the Ofcom website¹⁸.

Costs and benefits associated with withdrawing the Topcomm Direction

- 3.81 Ofcom considers that the Topcomm scheme provides negligible benefits to consumers. Low website usage suggests that the decision to withdraw the Direction is unlikely to have any negative impact on consumers. Indeed it is not clear, even if there were to be greater use of the website, if the information on it is of any real value to consumers.
- 3.82 However, our estimates suggest that the withdrawal of the Topcomm Direction (option 3) is likely to have the benefit of reducing the current cost burden on industry of between £342,000 and £666,000 per annum.

How has Ofcom estimated the costs of running Topcomm per year?

¹⁸ http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

- 3.83 We have been informed by the Forum's secretariat that the existing Topcomm scheme costs industry £125,000 a year to run¹⁹. This includes the cost of the secretariat (£50,000), running the website (£3,000) and employing an independent comparability auditor (£70,000). This amounts to around £7,000 per Forum member.
- 3.84 In addition, each Forum member needs to employ its own internal accuracy auditor to make sure that the data recorded, the processes used to record and store the data, and the calculation and documentation of the data all fit the current definitions and guidelines. Under the current scheme, this type of audit should take place once a quarter.

The time it takes to perform the role of accuracy auditor will depend on the size of the provider's activities – in particular the size of its call centre where the information on customer services is captured and recorded.

We understand from the existing independent comparability auditor that a simple rule of thumb is as follows - for every 100 seats in a call centre, it would take an internal auditor around 3 days to carry out an audit. In addition, a further day would be required for the auditor to write up a report and attend any Forum meetings. An auditor of this kind is likely to receive an annual salary of £25-£30,000. Alternatively, a provider may choose to employ an external consultant to carry out the internal audit. A consultant is likely to charge a fee of around £750 a day²⁰.

On the basis of this information we estimate that for a smaller provider – with a call centre of less than 100 seats – the annual cost of four internal audits is no more than £12,000 (based on one auditor working 16 days a year at a cost of £750 per day). For a larger company – with call centres of over 300 seats - the cost is between £25,000 and £30,000 (assuming that the provider employs a full time auditor).

- 3.85 Given that there are currently 18 members of the Topcomm scheme with upper bound compliance costs per provider of between £19,000 and £37,000 per annum, we arrive at the figure of between £342,000 and £666,000.
- 3.86 The alternative option of modifying the scheme in the short run (option 2), is likely to increase the costs to Topcomm members on top of the annual running costs outlined above.
- 3.87 For example, the one off cost of modifying each metric (in order to potentially increase the relevance of information presented to consumers) is estimated to be between £250 and £7,500 depending on the size and nature of the provider.
- 3.88 Ofcom derived this estimated figure after receiving responses to an informal information request sent to Topcomm members in October 2007. The request asked Topcomm members to provide high level summaries of anticipated changes to the current metrics and their likely costs. From this request, we were able to gather a small amount of information from existing Forum members on the likely size of potential costs. One large provider estimated it would cost £7,500 to introduce one new parameter, whilst a smaller provider estimated it would cost £250.
- 3.89 Assuming modifications were introduced to each 5 of the parameters, and multiplied by the 18 members of Topcomm, the overall cost to industry of introducing the

¹⁹ Source - UniTech (who provide Topcomm secretariat)

²⁰ This is the daily rate for an internal auditor in the industry estimated by Traqs.

modifications to the current metrics, would be in the region of £22,500 to £675,000. Please read stakeholder comments on costs further below at paragraph 3.95.

- 3.90 A further modification to the current scheme, such as raising awareness through a publicity campaign, is also likely to increase costs on industry. As part of this consultation we have not considered what type of publicity campaign would be most appropriate or how much this might cost. However, Ofcom believes that an appropriate one off nationwide publicity campaign, using multiple media channels to raise awareness about a single issue would cost in the region of £500,000²¹. This would include advertisements in the national print media and local print media.
- 3.91 The drawback of option 2 is that we are not currently certain that such modifications would provide sufficient benefits to consumers to outweigh the relatively high additional costs. In addition, implementation of the modifications would take an unknown period of time and in any case the changes could be very short lived. Ofcom is in the process of re-evaluating its approach to providing QoS information to consumers and once we have conducted further research, as outlined in the previous chapter, we will be better placed to consider the benefits of new performance measures, if any. In this context, we believe there would be few advantages to costly short term fixes that may have low, if any, impact.
- 3.92 Under our preferred option, QoS information, in its current form, would no longer be available. However it is not apparent that the Topcomm scheme provides significant benefits to consumers. Ofcom believes there would be little, if any, increase in the detriment to consumers for the following reasons.
- a) The Topcomm website receives an average of only 1,000 visits a week. This is a relatively low number of visits compared to other websites that provide information to consumers of communication services such as Uswitch and Moneysupermarket²². Even if the information provided was helpful, the low usage of the website suggests that the benefits accrued from the scheme by consumers overall is negligible.
 - b) The current metrics do not provide QoS information to consumers that is particularly helpful, as they are collected and presented in a way that does not provide an easy comparison with other providers.
 - c) There is a strong risk that current measures in place to ensure comparability are not sufficiently robust and so we cannot have complete confidence in the comparability of the information presented.
- 3.93 In summary, the current scheme does not appear to deliver tangible benefits to consumers and removing the Topcomm Direction is not likely to have any negative impact on consumers.
- 3.94 Given the above assessment, we believe the most appropriate option is to withdraw the Topcomm Direction with immediate effect. The benefits of the scheme appear sufficiently low that it is not worth the compliance costs that are imposed on operators. Given that the website obtains only 1000 visits a week this suggests a cost of between £6.50 and £12.70 per visit. While it is not possible to quantify the

²¹ Including PR launch, insertions in national and regional news and some regional outdoor advertising.

²² Moneysupermarket attracted approximately 65 million visitors in the financial year ended 31 December 2006.

average benefit per visit, the problems listed above suggest a high risk that it falls below these costs. There does not appear to be a feasible set of short-term modifications that could be quickly implemented and promoted and immediate withdrawal of the Topcomm Direction is likely to have the most desirable impact.

Stakeholder comments on our cost estimates and how these affect our final decision

- 3.95 Some stakeholders took the opportunity to question some of the cost assumptions made in the May Consultation. It has been suggested that the costs associated with revising these metrics would not be as significant as those estimates detailed in the May Consultation. They suggest that the costs of capturing data on at least three of the time based measures (service provision, faults and complaints) would remain the same and the only modification would be the change from target to actual time, which would take a reporting analyst a matter of minutes to change.
- 3.96 Even if we were to assume, that the costs incurred from introducing these revisions to the metrics were around the lower bound cost of £250, they would not necessarily assist in presenting information to consumers that was relevant. As mentioned at paragraph 3.40, we do not know, at present, what kind of information is most relevant to consumers.
- 3.97 The question as to what is 'relevant' is likely to be better understood once Ofcom's policy re-evaluation has been concluded over the coming months.
- 3.98 What is known, for certain, is that the Topcomm scheme modified or not, will continue to incur significant costs on those CPs caught by the Topcomm Direction. Ofcom continues to estimate that the cost of participating in the Topcomm scheme for an individual provider is between £19,000 and £37,000 a year depending on the size of the provider. Those costs are being incurred without there being any evidence that the information being provided is actually relevant. Although modifications could be introduced to apparently make them more user friendly, there's no way of knowing, at present, if the information available is relevant to consumers. Unless we are in a position to have a better understanding of what kind of QoS information is relevant, it will not be possible for us to modify the Topcomm scheme in a meaningful manner.
- 3.99 Consumer Focus and Citizens Advice both commented that the May Consultation did not consider the possible cost inefficiency of removing the Direction at this time. As mentioned at paragraph 3.69, they mention the potential costs associated with dismantling the QoS apparatus (personnel, systems and processes in place to collect CPs' own performance data) now, only for this or a similar scheme to be re-introduced at a later stage. Such a view suggests that it would be inefficient to incur costs to close certain functions down, only for them to have to introduce something similar at some point in the future.
- 3.100 We note that closing down the scheme now, and introducing a similar scheme at a future point consisting of all the same CPs, may not represent an efficient use of time and resources.
- 3.101 However, it is not clear if the membership of any scheme is likely to remain the same or even broadly similar, even if we considered that a future scheme, requiring Ofcom's intervention, was appropriate. Given that future requirements might not apply to all current Topcomm members, it is likely that some of the costs associated

with dismantling the scheme would not be wasted. We base this view on the following considerations:

- a) Future requirements, if introduced, might not apply to all current Topcomm members. As mentioned above, it would be less likely that a requirement to collect and publish QoS information would apply to CPs that provide services predominantly to larger corporate clients. So any decision to dismantle the QoS apparatus for these types of CPs (approximately nine of the current eighteen members) would not be a wasteful exercise.
- b) Future requirements might apply to CPs that are not caught by the Topcomm Direction. The reach of the Topcomm Direction is limited to those CPs that provide fixed line voice services²³. Our research suggests that consumers are interested in knowing about a wider range of communications services²⁴. The implication is that, if a requirement for providing QoS information were to be established, it might just as likely apply to providers of services including mobile voice and/or internet services. Therefore, these CPs would need to establish infrastructure from scratch anyway.

3.102 In summary, although we note the views about the relatively low costs that would be incurred to revise the metrics, this does not necessarily alter our decision to withdraw the Topcomm Direction. Even if we were to assume that costs were minimal, it is not clear if such revisions would introduce metrics that are actually relevant. However, we do know that CPs would continue to incur ongoing running costs until a point in the future when we have a better understanding of what information is more relevant to consumers.

3.103 We appreciate that closing down the scheme now and introducing something similar would not be a particularly efficient use of CP resources. However, it is possible that the membership of a future scheme will be very different if one were to be introduced. It's not clear if providers of services to business would be included, which would exclude half of the current Topcomm. Also, a number of other CPs, who provide broadband and mobile services to consumers would be just as likely to be included, therefore having to build these systems from scratch anyway.

Equality Impact Assessment (EIA)

3.104 Ofcom is required by statute to assess the impact of all our functions, policies, projects, and practices on race, disability and gender equality, an EIA is our way of fulfilling these obligations. An EIA is an analysis of the potential impacts of a proposed policy or project is likely to have on people depending on their background or identity.

3.105 We are not aware that the issues being considered here are intended (or would, in practice,) have a significant differential impact on different racial groups, on disabled consumers compared to consumers in general. Similarly we have not made a distinction between consumers in different parts of the UK or between consumers on

²³ Under the Topcomm Direction, only CPs providing Publicly Available Telephone Services by means of a Public Telephone Network at a fixed location with at least £4 million in net revenues per quarter and 100 million minutes of calls handled to End-Users per quarter have to comply with the requirements set out the Direction.

²⁴ http://www.ofcom.org.uk/consult/condocs/qos08/provision_qos/

low incomes. We believe that the decision to withdraw the Topcomm Direction will not have a particular effect on one group of consumers over another.

How does withdrawing the Topcomm Direction meet the requirements/tests set out under the Act?

Ofcom's general duties

3.106 Section 3 (1) of the Act sets out the principal duty of Ofcom:

- a) To further the interests of citizens in relation to communication matters; and
- b) To further the interests of consumers in relevant markets, where appropriate by promoting competition.

3.107 Section 3 (3) sets out that in performing our duties under section 3.1, we must have regard, in all cases, to

- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- b) any other principles appearing to Ofcom to represent the best regulatory practice.

3.108 Section 3(5) further sets out that in performing our duties under section 3 of furthering the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

3.109 We consider that in withdrawing the Topcomm Direction we fulfil our duties under section 3. The Topcomm scheme does not provide any apparent value to consumers and removing the Topcomm Direction will not, in our view, have an adverse impact on the interests of consumers. We consider that the withdrawal of the scheme allows Ofcom to focus our attention on a wider policy re-evaluation that will help us to better understand consumers' needs in regards to quality of service information. We also consider that in withdrawing the Direction, the interests of consumers and citizens will be furthered by reducing the financial burden on CPs, a burden that would potentially be passed on to consumers. As discussed in the document, these burdens do not provide significant benefit to consumers as there is little awareness and use of the information.

3.110 Under section 4 of the Act we must also act in accordance with the six European Community requirements for regulation, including the requirement to promote competition in relation to the provision of electronic communications services and the requirement to promote the interests of all persons who are citizens of the European Union. Ofcom considers that in withdrawing the obligation on CPs to collect and publish performance data there will be no adverse impact on competition or the interests of citizens. The information currently produced is not widely used and does not have any positive effect in promoting competition or the interest of consumers.

3.111 We further believe that our decision is also in line with our duty to review regulatory burdens under section 6 of the Act and that withdrawing the Topcomm Direction removes an obligation that does incur costs on CPs without providing any tangible benefit to consumers.

3.112 Ofcom considers that the decision to withdraw the Topcomm Direction meets the four tests set out in Section 49 of the Act.

Objectively justifiable

3.113 Ofcom considers that the withdrawal the Topcomm Direction satisfies the test of being objectively justifiable. The evidence set out in the May Consultation demonstrates that the obligations set out in the Topcomm Direction impose a significant cost on CPs but do not provide any tangible benefits to consumers.

3.114 Our estimates suggest that the overall cost to CPs caught by the Topcomm Direction stand at between £342,000 and £666,000 per annum. This would amount to a cost of at least £6.58 for every visit to the Topcomm website. Withdrawing the Topcomm Direction would remove this cost burden from CPs without having any detrimental impact on consumers.

3.115 The Topcomm website receives relatively few visitors (approximately 1,000 a week), and comments from consumer groups suggest that the information provided is not useful. As the Topcomm scheme provides so little value to consumers, we consider that withdrawing the Direction will not have any detrimental impact on consumers' interests.

3.116 Given that the withdrawal of the Topcomm Direction is not likely to have any detrimental impact on the benefits to consumers, yet reduces the significant cost burden on providers, Ofcom believes the decision is objectively justified.

Proportionate

3.117 We consider that the least intrusive option is to withdraw the Topcomm Direction at this time. We have concluded that the Topcomm scheme does not achieve the original objectives envisaged when the Topcomm Direction was introduced. In addition we do not believe that we will be in a position to know how such objectives can be achieved until a policy re-evaluation has been completed. Until that re-evaluation stage has been completed, we believe that any obligations that would have a significant detrimental impact on CPs should be removed.

3.118 Maintaining the Direction would be intrusive as CPs would be expected to continue to collect, audit and publish performance data even though we do not consider the information published provides any value to consumers.

3.119 Modifying the Direction, would be even more intrusive because revising the metrics or increasing publicity would incur further costs in addition to normal running costs. Again, there is no certainty that such modifications would provide any value to consumers.

3.120 We consider that withdrawing the Direction would be the least intrusive option . Although there are possible closing down costs associated with withdrawing the Topcomm Direction, these could arise at some later stage..

Transparent

3.121 The May Consultation document and this Statement clearly set out what we would like to achieve with the proposed withdrawal of the Topcomm Direction and what the likely effects and impact of the proposed measures are likely to be. In addition the

Notification annexed to this statement clearly sets out that the current obligations set out in the Topcomm Direction, will no longer apply.

Non- discriminatory

- 3.122 Ofcom also considers that our decision is not unduly discriminatory against particular persons, as the withdrawal of the Topcomm Direction applies to all communications providers captured by it. Should the Topcomm Direction be withdrawn, the removal of formal regulations will apply to all CPs in the current scheme. A list of these communications providers is currently listed on the Topcomm website.
- 3.123 To conclude, Ofcom is satisfied that our preferred option (option 3) meets the 4 tests, required under section 49, to propose the withdrawal of a direction under a general condition.

Section 4

Next steps

- 4.1 This brief section will set out what happens now to the Topcomm scheme.
- 4.2 It will also briefly outline the next steps for the wider review of Ofcom's approach to the provision of information on quality of customer service.

What happens to the Topcomm scheme now?

- 4.3 It is Ofcom's view that the obligations required in the Topcomm Direction should cease with the publication of the Notification attached to this statement.
- 4.4 Ofcom is aware that CPs caught by the Topcomm Direction will have been collecting QoS data for the last few months leading up to the publication of this statement. As any obligations will cease from the publication of the Notification, CPs will not be obliged to audit or publish this data going forward.
- 4.5 Some CPs may wish to continue with publication of this data, however, this would be entirely at their own discretion.
- 4.6 The fate of all existing infrastructure, including Topcomm website, secretariat and auditing functions is similarly up to the discretion of CPs.

What is Ofcom doing to review our wider approach to the provision of QoS information to consumers?

- 4.7 The project team has been reviewing Ofcom's approach to the provision of QoS (Quality of Service) information to consumers over the last 18 months, including the future of the Topcomm scheme. As part of the wider review, we intend to conduct further research to help us:
 - a) Quantify levels of consumer satisfaction with customer services;
 - b) Understand consumers' experience of customer services;
 - c) Assess levels of performance to identify if certain CPs perform significantly worse or better than others and whether these are clustered around a particular issue; and
 - d) Better understand consumers' QoS information needs.
- 4.8 This workstream is likely to continue for the next few months and will continue to engage with stakeholders on the progress being made. Once we are in a position to consider the outcomes of this project, we are likely to hold further consultations that will invite stakeholders to comment.
- 4.9 We will also keep stakeholders informed of these activities as our work continues through informal meetings and, if appropriate, stakeholder workshops.
- 4.10 We are keen to highlight to stakeholders that our decision to withdraw the Topcomm Direction at this time does not mean that Ofcom may not at some point in the future

introduce measures where appropriate to ensure that consumers have access to comparative QoS information.

- 4.11 In our December 2006 Consumer Policy Statement²⁵, we outlined that we believe consumer information plays a critical role in competitive markets. Markets work best when consumers are fully informed about what services are available to them. Without this, consumers may make decisions that do not meet their needs and they may be reluctant to switch.
- 4.12 We suggested that some consumers do not find it easy to make informed decisions and compare services. This may be because appropriate information does not exist or because the information they are presented with is complex, not easy to interpret and located in a number of different places. Where this is the case, we believe there may be a role for Ofcom in supporting consumers in their decision-making to help them make effective choices.

²⁵ Ofcom's Consumer Policy: Statement – 2006
<http://www.ofcom.org.uk/consult/condocs/ocp/statement/statement.pdf>

Annex 1

NOTIFICATION OF WITHDRAWAL OF DIRECTION PURSUANT TO SECTION 49 OF THE COMMUNICATIONS ACT 2003

Withdrawal of Direction under General Condition 21.1 given by Ofcom on 27 January 2005 requiring specified Communications Providers which provide Publicly Available Telephone Services over a Public Telephone Network at a fixed location to provide quality of service information.


WHEREAS:

- A. The Director General of Telecommunications (the 'Director') issued on 22 July 2003 the General Conditions Notification, which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48 (1) of the Communications Act 2003 (the 'Act');
- B. General Condition 21.1 in Part 2 of the Schedule to the General Conditions Notification provides that Communications Providers shall, on the direction of OFCOM, publish comparable, adequate and up-to-date information for End-Users on the quality of its service;
- C. OFCOM, on 27 January 2005, issued a Direction under General Condition 21.1 requiring specified Communications Providers which provide Publicly Available Telephone Services over a Public Telephone Network at a fixed location to provide quality of service information (the 'Direction');
- D. Pursuant to section 49 (4) of the Act, on 11 May 2009, OFCOM issued a notification of a proposal to withdraw the Direction (the 'May Notification');
- E. In the May Notification and accompanying explanatory statement, OFCOM invited representations about any of the proposals therein by 12 June 2009.
- F. A copy of the May Notification was sent to the Secretary of State pursuant to section 50 (1) (b) of the Act;
- G. By virtue of section 49 (9) of the Act, OFCOM may give effect to the proposal set out in the May Notification, with or without modification, if:
 - they have considered every representation about the proposal that is made to them within the period specified in the May Notification; and
 - they have had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State;

- H. OFCOM received responses to the May Notification and have considered every such representation made to them in respect of the proposals set out in the May Notification and accompanying consultation document and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose;
- I. OFCOM may withdraw a direction pursuant to section 49 (2) of the Act where it is satisfied that to do so is:
 - (i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (iii) proportionate to what it is intended to achieve; and
 - (iv) in relation to what it is intended to achieve, transparent;
- J. For the reasons set out in the explanatory document accompanying this Notification, OFCOM is satisfied that the conditions set out above are met and that they have acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;

NOW, THEREFORE, PURSUANT TO SECTION 49 OF THE ACT AND GENERAL CONDITION 21.1 OFCOM MAKES THE FOLLOWING DECISION:

- 1. OFCOM, in accordance with section 49 of the Act, hereby withdraws the Direction issued by OFCOM on 27 January 2005 under General Condition 21.1 requiring specified Communications Providers which provide Publicly Available Telephone Services over a Public Telephone Network at a fixed location to provide quality of service information.
- 2. As a result, the Direction shall cease to have effect immediately with the publication of this notification.
- 3. In this notification:
 - (i) “the Act” means the Communications Act 2003; and
 - (ii) “OFCOM” means the Office of Communications.
- 4. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification or in General Condition 21 and otherwise any word or expression shall have the same meaning as it has in the Act.
- 5. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

A handwritten signature in black ink, appearing to read "Claudio Pollack". The signature is written in a cursive, flowing style.

Claudio Pollack

Director of Consumer Policy

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

23 July 2009