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Dear Gavin,

Mis-selling of fixed line telecommunications services

KCOM welcomes the opportunity to comment on Ofcom's proposals to address mis-selling of fixed line telecommunications services. We agree that levels of mis-selling remain too high, that the existing Code of Practice approach is deficient and there is a need for some additional measures in order to ensure that more effective action can be taken to address mis-selling activity.

However, we have concerns with the extent of the measures which have been proposed by Ofcom, particularly the call recording requirements. While we are supportive of some level of call recording and appreciate the assistance it will provide to Ofcom in pursuing investigations we believe that the proposed 100% requirement will penalise compliant CPs and is disproportionate for smaller CPs and those for whom transferring customers represent a small proportion of their business. We believe that the implementation of a lower threshold for call recording would still be effective in reducing mis-selling and address concerns about the practicalities of the proposed 100% requirement.

We also believe that implementing a requirement for recording calls relating to the use of Cancel Other may not at this time be justified but suggest this is something which should be kept under review. Given these calls are driven by mis-selling and slamming activity the additional measures Ofcom has proposed in respect of sales should in themselves result in a reduction in the use of Cancel Other. We also do not agree with the proposal that gaining CPs should be required to advise customers of the potential for liabilities with their existing provider at the point of sale. We note that Ofcom has already taken action to address the specific issue of early termination charges in the context of the Guidance on Additional Charges and this should now have started to address customer awareness of these charges.

Our specific comments in response to consultation questions are below.

Question 1 Based on our analysis of Ofcom's mis-selling complaints data, do you agree that further improvements are achievable, and that both absolute and relative numbers of mis-selling incidences can be reduced? Please provide an explanation to support your response.

KCOM is disappointed to see that mis-selling complaints in the fixed line telecommunications market remain at the level indicated by Ofcom's data. We recognise that the level of complaints



about mis-selling can be influenced by a number of factors and that not all complaints will relate to genuine instances of mis-selling. However, the fact that mis-selling remains a consistent issue for

complaints would indicate that to a degree these complaints are driven by both deliberate mis-selling activities and badly managed sales processes, neither of which are acceptable for consumers and should not be acceptable to reputable businesses operating in the sector. They are also issues which communications providers can take direct action to address and we therefore agree that further improvements are achievable and that both absolute and relative numbers of mis-selling instances can be reduced.

Question 2 Based on our experience of our enforcement activities, do you agree that the regulations should be further strengthened in order to better meet Ofcom's policy objectives and aims? Please provide an explanation to support your response.

KCOM agrees that the regulations should be further strengthened in order to meet Ofcom's policy objectives and aims. In particular we share Ofcom's concerns about the effectiveness of the current Code of Practice approach and its inherent limitations in enabling Ofcom to take effective enforcement action where a CP fails to comply with the requirements of GC14.5 and the specific requirements set out in Annex 3 to GC14.

We agree that for smaller CPs these requirements can be confusing and may seem overly burdensome, particularly where a business is growing quickly. We also agree that the requirements of Annex 3 might be seen as overly prescriptive and burdensome for compliant CPs. We believe that while the use of Cancel Other across industry is to be welcomed, the fact that only BT is currently subject to the rules governing the use of Cancel Other creates opportunity for its misuse.

However, Ofcom must take care to ensure that any new requirements placed on CPs are not in themselves overly onerous. In particular we have concerns regarding the proposed call recording requirements. We provide further comments on Ofcom's specific proposals for future regulation below.

Question 3 What are your views on appropriate implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8? Please provide an explanation to support your response.

We believe that a shorter implementation period than 12 months is achievable for application of Cancel Other rules to all CPs who choose to utilise the Cancel Other process. As Ofcom has highlighted in the consultation Cancel Other is already widely used by other CPs and the introduction of a formal obligation to abide by the proposed rules should not be overly burdensome where a CP is already using Cancel Other in an appropriate manner. We therefore believe that the controls on the use of Cancel Other should apply as soon as possible after the new GC24 comes into effect.

With regard to implementation of the proposed requirements to advise customers of potential contractual liabilities with their existing CP, we think that a realistic implementation time will be very much driven by the size of a CP, specifically the number of staff which they need to train. For this reason we believe that the proposed 12 month implementation period is reasonable.

The implementation time for the proposed call recording requirements for sales and Cancel Other is very much tied to the extent of the final obligations. We would suggest that as a minimum 12 months is necessary to implement Ofcom's preferred option.

Question 4 To what extent do you consider our assessment of the potential costs and benefits outlined in the IA at Annex 5 is dependent on the implementation periods for each of the proposed measures we are consulting on as set out in sections, 5, 6, 7 and 8? Please provide an explanation to support your response.

Although we have not carried out an analysis of the cost impact of different implementation periods, KCOM can see the potential for additional costs to be incurred should implementation timescales be shortened. This is particularly the case for call recording and any measures which will require staff training where additional costs could arise from expedited systems development and the need for additional resource required to train staff in the required time.

Question 5 Do you agree that it is appropriate to modify, or remove, the July 2005 Cancel Other Direction (or any provision saving in effect this Direction) so that any changes take effect before the end of the implementation period for modifications to the General Conditions? Please provide an explanation to support your response.

KCOM believes that it would be appropriate to withdraw the July 2005 Cancel Other Direction when the new GC24 becomes effective, subject to the rules concerning the use of Cancel Other in GC24 coming into effect as soon as possible following implementation of the new condition.

Question 6 Do you agree with our preferred option on clarifying and simplifying the regulations, namely that we should:

(i) improve clarity of the regulations by redrafting in order to aid understanding and

(ii) simplify the regulations by moving away from a code of practice (process-based) approach to an outcome driven approach based on absolute prohibitions of mis-selling?

Please provide an explanation to support your response.

KCOM supports Ofcom's preferred option of redrafting the regulations to support an approach based on absolute prohibitions on mis-selling. We believe that these changes will provide Ofcom with a much better basis for tackling mis-selling practices and taking appropriate enforcement action against offenders.

Question 7 Do you consider there are other parts of the existing GC14.5 obligations where we could clarify and simplify the regulations, but have not proposed to do so? If so, please explain and set out the reasons for this.

No.

Question 8 Do you agree with our preferred option to provide better information to consumers on the potential consequences of switching? Please provide an explanation to support your response.

KCOM believes that it should be sufficient for both gaining and losing providers to include reference to the possibility of outstanding contractual liabilities with their existing CP through the NoT process. While we understand the logic in proposing that customers are also advised of these potential liabilities at the point of sale, we believe that any such requirement could result in customer confusion and deter customers from switching when gaining providers are unable to provide further clarification they may require and have to refer them back to their existing provider. We also believe that Ofcom has underestimated the cost implications of this option in terms of its impact on call times. We provide further comment on this in response to questions A5.3 and A5.13 below.

We are also conscious that Ofcom has recently provided guidance on when terms regarding ETCs would be considered fair in the context of the Additional Charges review and believe that guidance should go some way to addressing Ofcom's concerns and raising customer awareness of ETCs.

Question 9 Do you agree that Cancel Other should primarily only be permitted for reasons of slamming, as defined by Ofcom, or are there other circumstances where you feel use of Cancel Other should be permissible?

In order to limit the potential for misuse of Cancel Other we agree that its use should primarily only be permitted for reasons of slamming, as defined by Ofcom.

Question 10 Do you have any other suggestions for improvements to the reliability of the Cancel Other data and, in particular, the existing reason codes?

No.

Question 11 Do you agree with Ofcom's proposals not to transpose information sharing obligations relating to use of Cancel Other as part of the proposed new General Condition? Please provide an explanation to support your response.

KCOM agrees with Ofcom's proposals not to transpose information sharing obligations relating to the use of Cancel Other as part of the proposed new General Condition.

Question 12 Do you agree with our preferred option on record keeping for sales? Please provide an explanation to support your response.

KCOM is fully supportive of Ofcom's proposal to clarify the existing obligations relating to record keeping obligations for sales. However, we have a number of concerns regarding the proposed call recording obligations.

Our primary concern is that the introduction of a mandatory call recording requirement is not specifically targeted at the providers who are engaging in mis-selling activity or the calls which might generate mis-selling activity. Instead a blanket requirement will impose a considerable regulatory burden and costs on currently compliant providers which we do not believe is either justified or proportionate.

Many providers use a general Customer Services function to deal with a range of enquiries including sales. In this instance both outgoing and incoming calls may well relate to transfer requests and as a result this will necessitate recording of 100% of all calls regardless of what those calls relate to. For example, while we do provide a specific number for customers to contact us on to enquire about indirect services, these calls are not routed to a dedicated sales centre but rather are answered by our Customer Services team which is also contactable on another number and deals with a range of issues for both directly and indirectly connected customers. The call recording requirements which Ofcom has proposed would require that every incoming and outgoing call is recorded on the basis that it may be a communication with a customer concerning a transfer of service. This has the potential to increase the costs of call recording considerably particularly in respect of storage and retrieval.

While we do carry out some call recording, this is a particular concern for KCOM given the small proportion of our business which currently involves customer's transferring service. Ofcom's proposals would also require that we extend call recording to Customer Services functions where it is currently not used - specifically this relates to the recording of calls made to and from business customers. We would need to implement additional call recording in order to ensure that we capture calls to and from a very small number of "small business customers". While we appreciate

that the “reasonable endeavours” caveat might be designed to address this concern, the requirement that call recording is never less than 90% overrides this.

Our preference would be for a requirement to record outgoing sales calls only which could offer a more proportionate solution, targeting the specific instances in which mis-selling is more likely to occur. However, we appreciate that this will not necessarily capture the full range of situations in which sales calls might occur. As an alternative we would support a lower call recording threshold which recognises the realities of how CPs deal with customer contact and provides a more reasonable approach.

We would also request that Ofcom provide some guidance regarding its expectations in terms of resilience. Call recording systems can and do fail and we would anticipate that in those circumstances a reasonable approach would be taken by Ofcom, but if there is an expectation that CPs should be providing some form of back-up then this needs to be made clear.

Question 13 Do you agree with our preferred option on record keeping where Cancel Other is used? Please provide an explanation to support your response.

Ofcom’s proposals regarding the recording of calls relating to the use of Cancel Other raise similar issues to those discussed in relation to the recording of sales calls and we reiterate those concerns.

We also note that if additional measures are introduced which are successful in addressing instances of mis-selling and slamming we would expect that the use of Cancel Other should diminish. Given the combination of these factors and the fact that Ofcom’s modelling suggests that the introduction of a call recording requirement for Cancel Other is finely balanced in terms of the NPV, we believe that the introduction of such a requirement at this stage would be disproportionate. This should however remain under review by Ofcom once the new mis-selling measures have been introduced. We would support a requirement to retain records of all written communications concerning Cancel Other.

Question 14 What are your views in relation to consideration of other options described in section 9? Please provide an explanation to support your response.

We agree with Ofcom’s view that it may be appropriate to reconsider other options for tackling mis-selling should the proposals in this consultation not lead to a sufficient reduction in fixed line mis-selling.

While we have no particular comments on the possible alternative options, we believe it is important that the costs of these measures are carefully considered should Ofcom propose further solutions at a later date. In particular the issue of where those costs should appropriately fall is likely to be key. For example, KCOM does not believe that it would be fair to expect all CPs to bear the cost for a validation system which is necessary as the result of the actions of a small number of CPs using unacceptable sales practices and/or abusing the transfer process.

Question A5.1: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? If not, please provide an explanation and evidence to support your response.

We agree that Ofcom’s preferred approach of redrafting and simplifying the current mis-selling provisions through the introduction of high-level prohibitions in new GC24, clarified through guidelines should only impose additional costs on CPs where they are not compliant with the current CoP approach. This is however, subject to our comments below on the costs of the introduction of additional measures such as call recording.

Question A5.2: To what extent is it possible to assess the impact that this option might have on the current level of mis-selling in its own right? Please provide an explanation and evidence to support your response.

KCOM believes that it is extremely difficult to assess the impact that a requirement to advise customers at point of sale of potential contractual liabilities with their existing CP will have on mis-selling. A failure to highlight the potential for liabilities such as early termination charges cannot in itself be categorised as mis-selling. Therefore the impact of such a measure will be limited to those situations where a gaining provider might mislead a customer regarding their potential contractual liability to their existing CP. The extent to which this is currently a problem has not been quantified.

Given the inherent difficulty in assessing the impact of this measure on mis-selling, the potential for increasing customer confusion and reluctance to transfer and the steps taken to address customer awareness of ETCs as part of the Additional Charges Guidelines, we believe that the proposed requirement for gaining CPs to advise customers of potential liabilities with their existing CPs at the point of sale is not justified.

Question A5.3: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response.

We note that the information provided to Ofcom by CPs indicated two main areas of costs – the costs of adjusting sale scripts and training staff and the time added to the sales call. However, we are unclear whether the costs of the time added to the sales call simply refers to the additional time it will take to advise customers of the potential for existing contractual liabilities or whether it also includes the costs of likely further customer contact which will be necessitated in some cases while customers consider the implications in terms of their current contracts. We would expect that advising customers of potential liabilities with their existing provider will result in a number of customers delaying their decision to order service which will generate a further call should they wish to proceed with the order once they have checked on liabilities. As Ofcom has recognised that this option is finely balanced in terms of net welfare benefits we think that it is important that these costs are captured in some way if they have not already been.

Question A5.4: Do you agree with our assessment of the likely magnitude of the costs and benefits of our preferred option? Please provide an explanation and evidence to support your response.

We agree that the extension of Cancel Other rules (except information sharing requirements) to all CPs utilising Cancel Other should not give rise to additional costs for CPs on the basis that CPs other than BT already use Cancel Other and are expected to do so in accordance with agreed industry processes.

Question A5.5: Do you agree that this option will not result in incremental costs to CPs? Please provide an explanation and evidence to support your response.

We agree that a requirement for CPs to retain records relating to sales and the use of Cancel Other should not result in CPs incurring additional costs.

Question A5.6: Do you agree with this proposal in the light of the NPV estimate? Please provide an explanation and evidence to support your response.

As we have noted in our answers to questions 12 and 13, we are concerned that Ofcom's proposals will require that all incoming and outgoing calls are recorded to ensure that all sales calls and calls concerning Cancel Other are captured.

While we do not have a view on the overall costs which Ofcom has estimated we are concerned that Ofcom does not appear to have not taken account of the possibility that, depending on the call recording solution implemented, providers may have to introduce a call recording solution at a number of different locations and that this may have an impact on the implementation costs. This is potentially an issue for KCOM.

Question A5.7: Do you agree that orders are an appropriate proxy for sales? Please provide an explanation and evidence to support your response.

We agree that orders are an appropriate proxy for sales.

Question A5.8: Do you agree with our assumption that volume of sales is a key driver of costs? If not, please provide an explanation and evidence to support your response.

While we appreciate that volume of sales will be a key driver of costs, it is essential that Ofcom also considers the set-up of CPs' Customer Services functions and in particular the way in which resources dealing with sales are allocated (e.g. dedicated or general customer services). This will have a fundamental effect on the number of calls which will need to be recorded and stored and therefore on the costs for individual CPs.

Question A5.9: Do you agree that it is reasonable to use a 5-year time period for our NPV analysis? Please provide an explanation and evidence to support your response.

We agree that using a 5 year time period for the NPV analysis seems reasonable, with one reservation. Given Ofcom's stated concerns regarding the issue of mis-selling and the priority it has been given we would expect Ofcom to assess the efficacy of any new measures in a much shorter time period than 5 years. We would therefore suggest that it may be appropriate to utilise a shorter time period, perhaps 3 years.

Question A5.10: Do you consider that costs attributed to changing sales scripts are likely to be one-off in nature? Please provide an explanation and evidence to support your response.

We agree that costs associated with changing sales scripts to include a prompt concerning potential contractual liabilities with a customer's existing CP are likely to be one-off in nature.

Question A5.11: Do you consider that the options to clarify and simplify the existing regulations and to provide information at the point of sales would each reduce levels of mis-selling by around 1 percent per annum? Please provide an explanation and evidence to support any alternative assumptions.

We do not have a particular view as to whether the 1% reduction is an accurate assessment and in the absence of any data which attributes the extent of mis-selling caused by these factors we believe that it is extremely difficult to make an accurate assessment.

However assuming the figure is accurate we are concerned that it represents a very small benefit in relation to providing additional information at the point of sale. We believe that the additional costs incurred in providing information about potential liabilities with an existing provider could well

be greater than estimated by Ofcom taking into account the likelihood that customers will delay decisions and therefore generate additional calls should they wish to proceed with ordering service.

Question A5.12: Do you consider that the options on call recording for telesales and Cancel Other could reduce mis-selling and Cancel Other requests by 30% in Year 1 and by 50% in Year 2? Please provide an explanation and evidence to support any alternative assumptions.

We have no comments on these assumptions.

Question A5.13: Do you agree that it is reasonable to assume that adding such a sales prompt would increase the call length by an additional 20 seconds? Please provide an explanation and evidence to support your response.

We believe that the increase in call length is likely to be greater than the 20 seconds estimated. We would expect that a prompt will result in customers requesting some clarification which will increase the length of the call. Having run some scenarios we believe that the increase in call length is likely to be around 35 seconds. We also refer to our previous comments regarding the likelihood that advising customers of potential liabilities with their existing provider will result in additional calls being generated.

Question A5.14: Do you feel these assumptions are appropriate? If not, please provide an explanation and evidence to support any alternative assumptions.

KCOM has concerns regarding the assumptions made for set-up costs. We note that Ofcom has used input from CPs with 1000 or more set-up orders in 2008, accounting for approximately 90% of total fixed-line telecommunications sales over the last year. However, this does not take account of the far higher cost which could be incurred by smaller CPs in implementing a call recording solution and crucially could deter new market entry by smaller players. We note that Ofcom has assumed that the one-off costs do not vary according to the number of calls recorded which suggests that smaller players or those for whom the relevant services represent a very small proportion of their business will face a disproportionate cost in implementing a call recording and storage system.

Question A5.15: Do you agree that these other indirect costs are not significant? If not, please provide an explanation and evidence to support your response.

We have no comments on these other indirect costs.

Question A5.16: Do you consider that one-off incremental costs per sale of £4.4 and ongoing incremental costs per sale of £0.6 are reasonable assumptions for the rest of the industry? Please provide an explanation and evidence to support any alternative assumptions.

We have no specific comments on these costs.

Question A5.17: Do you agree that this option will not result in incremental costs to CPs? If not, please provide an explanation and evidence to support your response.

We agree that if CPs were to retain the freedom to determine what particular records are made and retained with regard to the use of Cancel Other this would not result in incremental costs to CPs.

Question A5.18: Do you consider that these estimates are reasonable? If not, please provide an explanation and evidence to support your response.

We have no specific comments on these estimates.

Please do not hesitate to contact me if you wish to discuss further.

Yours sincerely

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