



Monitoring Compliance with Charge Controls

Consultation

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Section 1

Summary

Background

- 1.1 Charge controls¹ provide a remedy to protect consumers and promote competition in markets which are not operating effectively. Part of the effectiveness of such remedies is the ability to monitor compliance with the obligations imposed.
- 1.2 Ofcom considers that the current framework for monitoring compliance with charge controls does not deliver sufficient confidence and therefore proposes improvements through:
 - a set of principles to apply in general to all future charge controls; and
 - the application of those principles to provide specific recommendations for the wholesale mobile voice call termination (MCT) control.
- 1.3 The number of charge controls has increased over time. There has also been a move towards more extensive/more complex controls. Originally retail charge controls were imposed on BT when it was privatised in the mid 1980's. Today the five Mobile Network Operators (MNOs) are subject to wholesale charge controls, whilst a number of new controls have been imposed on different parts of BT.
- 1.4 As a result of these developments, buyers of a service are in many cases no longer able to check compliance with a charge control for themselves. Ofcom currently receives annual returns from communication providers subject to SMP conditions (regulatees) to demonstrate compliance with each charge control. There is however no requirement for verification of this information. Owing to information asymmetry Ofcom's work is limited to performing only basic checks on these annual returns. Although no material breaches have been discovered, Ofcom considers that it is good regulatory practice to review its processes and consider how they may be changed to improve the current situation. Benchmarking conducted by Deloitte & Touche LLP (Deloitte) on Ofcom's behalf, suggests that more extensive assurance is commonplace in other UK regulated industries and internationally.

Elements and evaluation of a framework for monitoring compliance

- 1.5 Ofcom engaged Deloitte to identify a full range of options available for compliance monitoring, based on its expertise and international benchmarking. Their report is reproduced at Annex 8.
- 1.6 Ofcom identified three key elements of a framework for monitoring:
 - the information content of returns;
 - the assurance over the integrity of the information contained in returns; and
 - the transparency provided through publication.
- 1.7 Monitoring of compliance with a charge control is effective when it provides

¹ Charge control in this document refers to both charge controls (for wholesale prices) and price controls (for retail prices).

consumers (and in particular buyers and potential buyers) with confidence that the control is being operated as envisaged by Ofcom and possible breaches can be investigated promptly.

Ofcom's proposals

1.8 Ofcom proposes that:

- Information content similar to that already provided in the current returns will continue to be submitted to Ofcom. The submission will be prepared in accordance with standards set by Ofcom, which will also determine the supporting documentation to be provided by the regulatee setting out details of how the submission has been prepared.
- An independent audit will be provided on the submission to provide assurance (in accordance with the guidance in SAS 700²) that the submission and the supporting documentation have been “properly prepared in accordance with” the standards set by Ofcom. In Ofcom’s opinion this provides a more effective tailored remedy than the alternative proposal of a ‘reasonable assurance report’ (as set out in ISAE 3000³).
- The regulatee will publish the audit opinion, a limited data submission (to protect confidential information) and the supporting documentation. A statement of responsibility signed by an Executive Director of the regulatee would also be published.

1.9 Ofcom considers that, in practical terms, the above proposals mean little change for regulatees from their current procedures but a justifiable amount of additional work for their Auditors⁴.

Next steps

- 1.10 Consultation on the proposals in this document closes on 23 October, 2007. When Ofcom has considered the representations made in response to the proposals set out in this document, it will publish a final Statement in early 2008 that will give effect to its proposals.
- 1.11 The proposals will be considered and implemented as part of future market reviews, on a case-by-case basis. They will be adopted via new or modified SMP conditions. The first of these is the MCT control, which came into effect on 1 April, 2007 and will be covered directly in the March 2008 final Statement.
- 1.12 For the MCT control, Ofcom proposes that the new procedures be effective for the first year of the control (1 April 2007 to 31 March 2008). It is expected that regulatees and Auditors will need to work to implement the new procedures during the period before to June 2008. Ofcom proposes that publication of the first compliance return and audit report should be no later than 29 July 2008

² International Standard on Auditing (UK and Ireland) 700, (ISA 700 internationally)
<http://www.frc.org.uk/images/uploaded/documents/ACFAB4.pdf>

³ International Standard on Assurance Engagements 3000.
http://www.ifac.org/Members/Source_Files/Auditing_Related_Services/2007_Handbook/2007_A270_1_SAE_3000.pdf

⁴ The term Auditor means Independent Auditors qualified to audit the regulatees’ statutory financial statements.

Section 2

Background

The regulatory framework

- 2.1 The regulatory framework for electronic communications networks and services is based on the EC Communications Directives (the “Directives”). The Directives were implemented into UK law principally by the 2003 Communications Act (the “Act”). The Directives require Ofcom to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions. Each market review has three parts:
- a definition of the relevant market or markets;
 - an assessment of competition in each market, in particular whether any companies have Significant Market Power (SMP) in a given market; and
 - an assessment of the appropriate regulatory obligations which should be imposed where there has been a finding of SMP.
- 2.2 Charge controls (also known as price controls in retail markets) are one type of regulatory obligation that may be imposed by Ofcom where there has been a finding of SMP. Charge controls are set out within the SMP conditions consulted on as part of the market review. Procedures for monitoring compliance (where they exist) are also set out within the SMP conditions.
- 2.3 Once set, SMP conditions usually remain in place until the next market review. SMP conditions may be modified or revoked only if either a new market review has been carried out or if there has been no material change within the relevant product or service market in the intervening period.
- 2.4 Ofcom can set SMP conditions that limit the amount that an SMP communications provider (regulatee) can charge for regulated products and services. These can be in the form of a charge ceiling, fixed for a period of time or in the form of an RPI+/-X control. In the case of a RPI+/-X control, the maximum charge increase in any year is limited to the rate of inflation (RPI) plus or minus ‘X’. The value of X is typically set to bring charges into line with forecast costs in the last year of the control period. Prices then follow a “glide path” starting from the price fixed or prevailing at the start of the control.
- 2.5 RPI+/-X charge controls may take the form of: overall basket charge caps (baskets) or simple individual charge caps⁵. Ofcom does not usually actively monitor compliance with simple charge caps that apply to individual products or services. In these cases, since prices are usually transparent to citizen-consumers, Ofcom relies on consumers to detect a breach and to complain to Ofcom. Ofcom can do a simple check on prices to monitor compliance, if required. The proposals considered in this consultation are not intended to apply to simple individual charge caps.
- 2.6 A basket contains a number of products or services (which are usually charged at different prices depending on the time of day). Compliance with the charge control is

⁵ The overall basket price cap can contain sub-caps that restrict how the prices of individual services within the basket can increase.

measured in terms of a weighted average charge. This gives the regulatee some flexibility to set prices of the individual elements within the basket, so long as the weighted average charge remains compliant. The degree of latitude is determined by the weight that a particular product or service has within the basket; the elements of which are price and traffic volume.

- 2.7 One drawback of this flexibility is that buyers are unable to detect breaches because they cannot reconcile the prices that they pay to the weighted average charge. These types of control therefore require some form of active compliance monitoring by Ofcom.

Current arrangements for monitoring compliance

- 2.8 Where compliance procedures are specified in the SMP conditions, they require the regulatee to supply to Ofcom, within a specified time period (usually three months), the data necessary to check whether the charge control calculation has been met for that period.
- 2.9 Currently, Ofcom receives spreadsheet returns (called data submissions) from regulatees to demonstrate compliance with each charge control. These typically contain prices by time of day and corresponding volumes as set out in the relevant SMP conditions. An example for the previous MCT charge control is shown in Annex 7. There is no requirement for audit and there is no statement from a Director of the regulatee as to the accuracy of the information. The form and content of data submissions can vary as there is no standardisation or requirement for consistency on formats, either between controls or between regulatees.
- 2.10 Ofcom is able to perform only basic checks on this data. Ofcom can compare prices in the data submission with published prices (where available) and can review volume trends. It can also check the mathematical logic of the calculation and the internal consistency of the data submitted.

Reasons for this review

- 2.11 Charge controls are an essential part of the regulatory framework. Setting charge controls requires a substantial commitment of resources both by stakeholders and by Ofcom. The revenues covered by charge controls are also significant, specifically: in the case of MCT, termination revenues are estimated at around £2.5 billion⁶. The methodology for monitoring compliance with charge controls should reflect the importance of the controls and be consistent with the current market and regulatory environment.
- The number and complexity of charge controls has increased significantly over time, with a shift towards wholesale controls. Originally charge controls were imposed on BT when it was privatised in the mid 1980s. Today the five MNOs are also subject to charge controls, whilst a number of new controls have been imposed on different parts of BT.
 - In part because of this increase in complexity and coverage, an individual buyer of a service is in many cases unable to check compliance with the charge control.
 - Ofcom has experienced a general problem with the timeliness of data

⁶ http://www.ofcom.org.uk/consult/condocs/mobile_call_term/statement/statement.pdf
Paragraph 2.17, page 7.

submissions and some particular issues with the quality of data submissions that Ofcom receives for compliance purposes. This suggests a need to give compliance monitoring a higher priority.

- There is also evidence that more extensive assurance and compliance monitoring is commonplace in other UK regulated industries and internationally. This is confirmed by the benchmarking exercise conducted by Deloitte⁷.

1. Do you agree that additional measures to ensure that charge control compliance submissions are properly prepared and independently assured are necessary?

⁷ Paragraphs 2.3.2 and 2.3.3 of the Deloitte report (Annex 8)

Section 3

Elements and evaluation of a framework for monitoring compliance

- 3.1 Ofcom engaged Deloitte to produce a report that considered a number of benchmark compliance processes drawn from other regulated utilities in the UK and international telecommunication sectors. Using this set of benchmarks as a reference point, Deloitte was commissioned to:
- present a full range of potential compliance options, with a particular focus on the level of financial information that would be required from regulatees and the degree of assurance that could be taken from it;
 - undertake an assessment of the relative merits of each compliance option; and
 - estimate implementation costs for each option.
- 3.2 The report that Deloitte provided is attached as Annex 8. It illustrates that Ofcom could choose to increase both the quantity of information requested and the level of assurance over the accuracy and completeness of the information that it receives⁸. There is however a trade off, since providing additional information and assurance involves incremental costs. The Deloitte report indicates a large number of information content and assurance level options which Ofcom could consider.
- 3.3 The Deloitte benchmarking exercise also illustrates that, in comparison to other UK regulators and most telecommunications regulators overseas, Ofcom's current procedures (in relation to the MNOs) are low in both information content and audit assurance⁹.

The attributes of good regulation

- 3.4 In presenting proposals, Ofcom must ensure an appropriate balance between the benefits for buyers and the burden imposed on regulatees:
- **Intervention and intrusion** – Ofcom operates with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required. Where Ofcom intervenes, it seeks to be as non intrusive as possible.
 - **Transparency** – It should be possible for [end-users and buyers] to judge the success of Ofcom's interventions.
 - **Cost effectiveness** - The cost to the regulatee and to Ofcom should be kept as low as possible.

The elements of an effective monitoring regime

- 3.5 Ofcom defines an effective monitoring regime as one where consumer-citizens, and in particular buyers (and potential buyers), can be confident that regulatees comply with their charge control conditions. An effective monitoring regime should provide

⁸ Section 3 of the Deloitte report (Annex 8)

⁹ Paragraph 2.3 of the Deloitte report (Annex 8)

buyers with the following interrelated elements:

- **Information** - namely the format and details of the content to be disclosed. There needs to be enough information to enable a conclusion to be drawn on compliance whilst recognising that the production of information places a cost upon regulatees.
- **Assurance** - namely the confidence buyers have that charge control information used for compliance monitoring, is unbiased, complete and free of material error. To provide buyers with sufficient confidence, the information used to determine compliance needs to be independently verified.
- **Publication** - namely the requirement that the compliance information, verification work carried out and conclusions reached are published on a media and in a format accessible to buyers. The current process is private and not transparent. Ofcom believes that some form of publication is required to deliver transparency and assurance to buyers. The commercial sensitivity of the information is a factor when considering publication.

3.6 These three elements may be combined to form different options and are each discussed further below.

Information assessment

3.7 Two of the possible information formats identified by Deloitte are regulatory accounts and data submissions.

Regulatory accounts

3.8 The Deloitte report defined two sub-levels of regulatory accounts.

- 'Full' regulatory accounts - which might comprise a profit and loss account, a statement of mean capital employed, detailed segmental analysis of operations, costs and income for all markets, disaggregated into regulated (which are further sub divided) and non-regulated services¹⁰.
- 'Reduced' regulatory accounts - which lessen the burden by reducing the frequency with which regulatory accounts are submitted and/or explicitly list only a relevant subset of services.

3.9 Telecommunications regulators in France and Italy use regulatory accounts for price control monitoring purposes¹¹. The preparation of regulatory accounts may however be disproportionate if only limited subsets of the regulatee's services are regulated. They are intrusive, costly and often include detailed cost information not needed to determine compliance¹². Ofcom has not, therefore, considered further the

¹⁰ BT is already subject to these

(http://www.ofcom.org.uk/consult/condocs/fin_reporting/fin_report_statement/) requirements although their regulatory accounting framework would need to be developed to encompass price control compliance as increased disclosure on certain volume data would be required

¹¹ Paragraph 4.2.1 of the Deloitte report (Annex 8)

¹² Deloitte estimate the incremental cost for a MNO is approximately 4-5 full time employees to develop and manage a cost model and around £500k - £700k required for external consultancy fees/ purchase of software. The incremental regulatory audit fee would be around £100k - £150k (Paragraphs 4.2.1 and 4.3.3 of the Deloitte report (Annex 8)).

compliance options in the Deloitte report that involve the development of regulatory accounts.

Data Submissions

- 3.10 Regulatees currently provide data submissions to Ofcom. These contain information needed to perform the calculations that confirm charge control compliance. They also contain additional information (such as monthly time of day volumes) which provides a greater understanding of the underlying traffic trends to Ofcom. These submissions are supplied to Ofcom in confidence, as the regulatees believe they contain confidential business information. Deloitte define the format as a 'detailed data submission'.
- 3.11 For publication, a subset of the detailed data submission (excluding the additional underlying information) may be more suitable. It would need to be granular enough to enable an informed buyer to reconcile published tariffs to the weighted average price. Deloitte define this as a 'limited data submission' and note that it could be provided independently of a detailed data submission. An example of what Ofcom believes this would look like for monitoring MCT can be found in Annex 7.2.

Assurance assessment

- 3.12 As explained in Section 2 above, Ofcom does not consider that the current process employed by Ofcom, where the regulatee submits an Excel spreadsheet demonstrating compliance, with no independent verification is sufficiently effective. The Deloitte report includes a similar proposal together with other 'light touch' options requiring no independent verification, including one offering limited assurance through a Director's statement. In a Director's statement, an Executive Director of the regulatee would provide written confirmation accompanying the compliance information submitted confirming its completeness and accuracy.
- 3.13 Ofcom considers that options that do not introduce independent scrutiny fail to provide sufficient assurance. However, a Director's statement has merit when used in conjunction with an additional assurance measure (see Section 4 below).
- 3.14 Providing assurance through independent verification is the only realistic way to tackle the asymmetry between the knowledge and information held by the regulatee and the information that Ofcom receives. The standards published by the International Federation of Accountants set out several alternative levels of assurance that could be provided by an Auditor¹³:
- Agreed upon procedures – ISRS 4400¹⁴
 - Assurance Engagements – ISAE 3000¹⁵
 - "Limited assurance engagement"
 - "Reasonable assurance engagement"

¹³ <http://www.ifac.org/>

¹⁴ As set out in the International Standard on Assurance Engagements (ISAE 4400)
http://www.ifac.org/Members/Source_Files/Auditing_Related_Services/2007_Handbook/2007_A280_I_SRS_4400.pdf

¹⁵ <http://www.icap.org.pk/Circulars/circulars2006/ISAE3000.pdf>

- Audit – SAS 700 (ISA 700)¹⁶
 - “Properly Prepared in accordance with...” and
 - “Properly Prepared in accordance with...” plus “Fairly Present”.

‘Agreed upon procedures’ (AUPs).

- 3.15 Under an AUP regime the Auditors agree a list of procedures (tests, checks, reconciliations etc) that they will perform and report on¹⁷. These procedures are specified by the client in the engagement contract (see para. 4.14) with the findings reported by way of a factual report. The Auditors do not express an opinion on the results of the AUPs nor the appropriateness of the procedures¹⁸. Auditors can carry out AUPs on either data submission or regulatory accounts.
- 3.16 The information asymmetry Ofcom experiences in relation to the regulatees’ volumes extend to the systems and processes they use. Ofcom is therefore not well placed to specify the detail of the testing to be undertaken in the AUPs. The Auditor’s role in AUPs is not to use its professional judgement but to mechanically perform financial tests as listed; they remain silent if the tests are incorrectly specified. AUPs are the least costly, interventionist and intrusive form of independent verification.
- 3.17 Ofcom considers that for charge control compliance, AUPs do not provide sufficient assurance because the level of judgement provided by Auditors is inadequate and the fundamental problem of information asymmetry is not properly addressed. In addition AUP reports are not suitable for publication as the reports are restricted to those parties that have agreed on the procedures being performed.

Assurance Engagements

- 3.18 Assurance engagements, as set out in ISAE 3000, are assignments carried out by Auditors who report a conclusion designed to enhance the degree of confidence in a particular subject matter by reference to evaluation against defined criteria. ISAE 3000 is intended to cover all subject matter outside the scope of audits/reviews of historical financial information. ISAE 3000 sets out two types of assurance engagement that an Auditor can perform; reasonable assurance engagements and limited assurance engagements.

Reasonable Assurance Engagement

- 3.19 A reasonable assurance engagement would require the Auditor to work towards a positive conclusion in a report on charge control compliance. To do this the Auditor would: obtain sufficient and appropriate evidence to understanding the subject matter; assess the risk of the regulatee misstating its compliance and perform clear procedures¹⁹ in order to analyse compliance by reference to the requirements set by Ofcom. A report would conclude with a statement such as: “In our opinion [the regulatee] has complied with the charge control condition, in all material respects,

¹⁶ <http://www.frc.org.uk/images/uploaded/documents/ACFAB4.pdf>

¹⁷ Para 4.3.5 of the Deloitte report (Annex 8)

¹⁸ Figure 6 of the Deloitte report (Annex 8)

¹⁹ A combination of inspection, observation, confirmation, re-calculation, re-performance, analytical procedures and inquiry. Further substantive procedures include obtaining corroborating information from sources independent of the regulatee and testing the operating effectiveness of internal controls.

based on Ofcom's Charge Control Standard"

- 3.20 By setting out rules used to demonstrate compliance in the Charge Control Standard (the Standard), Ofcom retains responsibility for setting out the principles of compliance to be applied by regulatees. The regulatees would be responsible for the preparation of "Supporting Documentation" recording the application of the Standard to its own systems.
- 3.21 The detailed mechanical checking of the numbers is performed by the Auditor, whose close proximity to the regulatee's books and records make them best placed to perform this task. Importantly, as distinct from AUPs, the Auditor is required to exercise its professional judgement on the compliance framework in order to positively state whether the data submission has been prepared using the Ofcom Standard. This requires them to ensure the procedures they follow are sufficient to make the positive statement in the report.
- 3.22 A reasonable assurance engagement involves more work than AUPs by the Auditors and therefore involves more cost, intervention and intrusion for the regulatee. However, unlike AUPs, the report can be published.
- 3.23 ISAE 3000 was introduced in 2005 and is used in conjunction with the EAB (Equality of Access Board) audit. Under the BT's Undertakings²⁰, the EAB must produce an annual report assessing equality of access, as operated by BT. The EAB is a largely non-executive sub-committee of the BT Board. The report is public and must be independently audited. The content of the report focuses mostly on process, although it has some financial elements²¹.
- 3.24 Although ISAE 3000 covers all non audit and historical non financial review work, Deloitte²² did not find instances of its use in compliance monitoring in the UK or abroad. Whilst this is perhaps due to the newness of the standard (introduced in 2005) it appears that it has yet to be tried and tested. ISAE 3000 does not define in detail the difference between the level of work required for a reasonable and for a limited assurance engagement (see para 3.27). This vagueness may lead to inconsistent approaches when followed by different firms of Auditors across different regulatees. The potential for inconsistency may even extend to situations where Auditors report on the same (reasonable or limited) basis.
- 3.25 Ofcom believes that the reasonable assurance engagement set out in ISAE 3000 provides about the right level of assurance, whilst being compatible with the proposed format of data submissions and publication. However, as set out above, Ofcom has reservations about the applicability of ISAE 3000 to charge control compliance and welcomes views from respondents on these issues.
- 3.26 Ofcom has been unable to establish an estimate for the incremental cost of either a reasonable or limited assurance engagement on a data submission. However, it should be significantly below the cost of a "fairly present" audit on a full set of regulatory accounts which Deloitte estimate to be £150k for an 'average' MNO²³ and be less than the cost of a "properly prepared in accordance with" audit.

²⁰ Undertakings in lieu of a reference under Part 4 of the Enterprise Act 2002
http://www.ofcom.org.uk/consult/condocs/statement_tsr/statement.pdf

²¹ Copies at
<http://www.btplc.com/Thegroup/Theboard/Boardcommittees/EqualityofAccessBoard/Publications/EABAnnualReport2007.pdf>

²² Figure 6 of the Deloitte report (Annex 8)

²³ Paragraph 4.3.3 of the Deloitte report (Annex 8)

Limited Assurance Engagement

- 3.27 A limited assurance engagement would require the Auditor to carry out enough verification work to enable them to make a negative conclusion on charge control compliance. The Auditor would report with a statement such as “based on our work described in this report, nothing has come to our attention that causes us to believe that [the regulatee] has not complied with its charge control, in all material effects based on Ofcom’s Charge Control Standard”.
- 3.28 As there is a lower level of risk that the Auditor might draw an incorrect conclusion, the amount of audit work carried out is reduced accordingly compared to a reasonable assurance engagement. Whilst this means less cost, intervention and intrusion for the regulatee, the lower level of assurance provided by the report does not, in Ofcom’s opinion, provide the confidence that consumers (and in particular buyers and potential buyers) need from the proposed new monitoring regime. This is because consumers do not see published a statement that tells them whether regulatees have complied with their charge controls or not.

Audit

- 3.29 Regulatory audits are carried out in accordance with International Standards of Auditing (ISAs). The concepts underpinning the ISAs have been established for a considerable time and are well understood by both Auditors and users of audit reports. The testing performed is based on a level of materiality calculated in accordance with those standards, and based on the regulated activities of the regulatee. Auditors give an opinion as to whether the regulatory accounts have been ‘properly prepared’ and ‘fairly present’²⁴. Whilst ISAs are primarily directed at the audit of financial statements and historical financial information, they can be followed when assessing other types of financial information such as data submissions.

“Properly prepared in accordance with...”

- 3.30 The Auditor provides an opinion that the regulatory accounts or data submission have been “properly prepared” in accordance with a proposed Standard and Supporting Documentation.
- 3.31 Where an Auditor is required to give its opinion as to whether the data submission has been “properly prepared in accordance with...” Ofcom would retain responsibility for setting out the principles of compliance to be applied by regulatees in the Standard. The regulatees would prepare Supporting Documentation applying the Standard to their own systems.
- 3.32 The detailed mechanical checking of the numbers is performed by the Auditor, whose close proximity to the regulatee’s books and records make them best placed to perform this task. The Auditor is required to exercise its professional judgement on the compliance framework, i.e. whether the data submission has been prepared following the Standard.
- 3.33 An audit to the “Properly prepared in accordance with...” standard involves more cost, intervention and intrusion for the regulatee compared to AUPs or an assurance engagement. However as buyers of communications services from each other, regulatees would benefit as consumers of audit assurance. The use of a “properly

²⁴ Figure 6 of the Deloitte report (Annex 8)

prepared in accordance with...” opinion on an Ofcom produced standard allows Ofcom to tailor the assurance levels to its requirements, supported by the body of ISAs and decades of practical experience. There may be more confidence in this reporting framework over the relatively unknown ISAE 3000, which Ofcom believes is a major advantage.

- 3.34 Ofcom has been unable to establish an estimate for the incremental cost for a “properly prepared in accordance with ...” audit of a data submission. However, it should be significantly below the cost of a “fairly present” audit on a full set of regulatory accounts which Deloitte estimate to be £150k for an ‘average’ MNO²⁵.

“Fairly present and have been properly prepared in accordance with...”

- 3.35 Like “Properly prepared in accordance with...”, the Auditor is required to exercise its professional judgement as to whether the regulatory accounts have been prepared in accordance with the Ofcom Standard.
- 3.36 In addition a “fairly present” opinion requires the Auditor to extend its judgement to whether the information in the regulatory accounts provides adequate disclosure and whether any departures from the Standard are justified and adequately explained. Ofcom feel this degree of judgement is inappropriate.
- 3.37 The “fairly present” standard is usually only used on full statutory or full regulatory accounts, as a suitably qualified audit firm would find it difficult to make a “fairly present” statement on a data submission. This is because it is usually only made on the regulatee’s overall financial position and performance, indicating if there exists sufficient disclosure and reasonable detail to interpret the accounts, and an absence of bias.²⁶ As discussed previously, Ofcom considers regulatory accounts disproportionate.
- 3.38 Ofcom considers that “fairly present” gives an inappropriate level of judgement to the Auditors that requires more work and which increases the cost²⁷, intervention and intrusion for the regulatee to very high levels because regulatory accounts are required.

Publication Assessment

- 3.39 Ofcom has identified three publication options for the charge control information. These are: no publication, publication with no data submission and publication with a data submission.

No publication

- 3.40 No publication is the current situation. Ofcom would continue to receive data submissions together with any proposed audit report in private. Whilst there is no intrusion to the regulatee, no publication provides no transparency.

²⁵ Paragraph 4.3.3 of the Deloitte report (Annex 8)

²⁶ Figure 6 of the Deloitte report (Annex 8)

²⁷ Deloitte estimate a fairly present audit opinion on full regulatory accounts to be around £150k (para 4.3.3 of the Deloitte report, Annex 8).

Publication with no data submission

- 3.41 Ofcom would receive the data submission and proposed audit reports in private and require the regulatee to publish a statement on compliance. A published statement by a Director of the company would set out his/ her responsibility in relation to compliance. The Director's statement would also confirm the results of the independent verification and name of the Auditors.
- 3.42 Although the regulatee may make reference to the audit report, the Auditors are unlikely to allow the report itself to be published without the underlying data, since it could be taken out of context. The process remains essentially private and does not provide real transparency.

Publication with a data submission

- 3.43 The regulatee would be required, as a minimum, to publish a limited data submission along with the Director's statement and Auditors report. Publication of a limited data submission provides an additional discipline for the regulatee. Accountability is increased as buyers (including other communications providers) have the opportunity to scrutinise the numbers. Publication places upon both the regulatee and the Auditors a degree of reputational risk.
- 3.44 Publication, even of limited data, can cause commercial harm or damage competition in some circumstances. Commercial harm is most likely to arise where, for example, the information published allows rivals to target the firm's customers, anticipate its prices or copy innovative service features. Ofcom does not believe this is likely to arise from any requirement, in the case of the MNOs, to publish prior year termination traffic weights. Although these may provide some information on customer profiles, the profiles would relate to calls received rather than calls made or retail services purchased from the regulated firm by its retail customers. The limited data would be an average for all fixed and mobile calls (terminating on a particular regulatee's network), rather than specific to an individual regulatee.
- 3.45 Harm to competition is most likely to arise where publication enables operators to agree on the prices they set and hence raise them above the competitive level. Ofcom does not believe this to be a significant risk in the case of the MNOs. The charge control itself would prevent any increase in charges for termination on MNOs' own networks. Whilst there may be some linkage between termination revenues and competition in the retail mobile market, it is not thought likely that publication of the limited data submission would lead to any reduction in competition in the retail mobile market.
- 3.46 Publication with a data submission provides real transparency, whilst increasing assurance in a cost effective manner.

Next section – proposal

- 3.47 The next section consolidates these proposals and sets out Ofcom's initial view of the proposed guiding principles and their application to all charge controls where active monitoring is undertaken.

Section 4

Ofcom's Proposals

Key elements

Information proposal

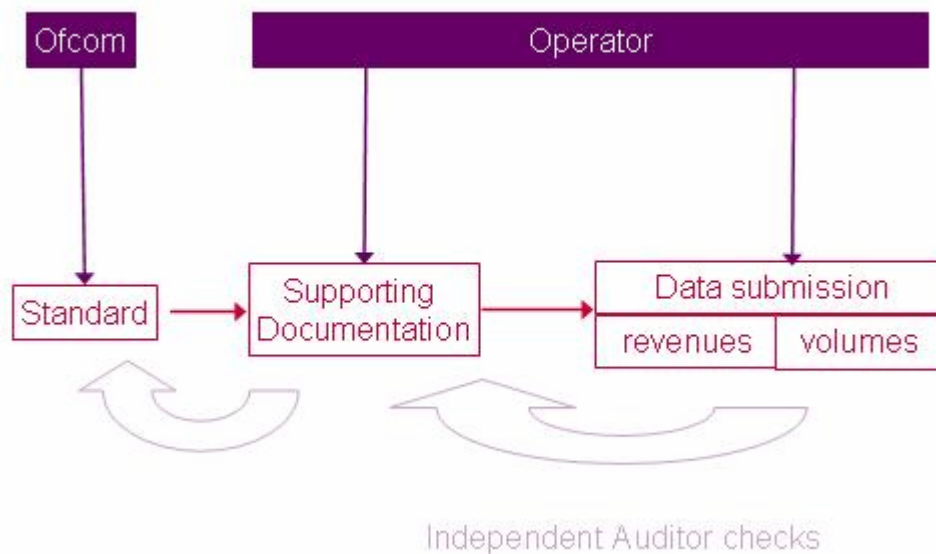
- 4.1 Ofcom believes the information currently received is sufficient. Ofcom proposes that the information contained in the detailed data submission should continue to be supplied to enable Ofcom to continue to understand how regulatees comply with their charge controls.
- 4.2 Ofcom proposes that a limited subset, suitable for publication, should also be supplied. This should contain enough information to enable an informed buyer to check that published prices correspond to the weighted average charge set out in the relevant condition.

Assurance proposal

- 4.3 Ofcom proposes that independent reporting from an Auditor should be a basic requirement in any future monitoring process. Whilst Ofcom sees considerable merit in reports in the form of a "Reasonable Assurance Engagement" format under ISAE 3000, it believes that the "Properly prepared in accordance with..." form of audit report under SAS 700 is likely to be the better option because of the wider understanding of the work behind, and the meaning of 'audit reports' compared to 'assurance reports'. The rest of this document and the draft condition have been drafted to allow the possibility of ISAE 3000 assurance reports (assurance reports) to replace the preferred option of a "properly prepared in accordance with..." audit report (audit report). Ofcom welcomes respondents' views on the merits of both these proposals.

Publication proposal

- 4.4 Ofcom believes that any proposal which requires publication of the required assurance statement along with a data submission will considerably raise the level of assurance provided in a cost effective way. It would also provide consumers with confidence that the charge control has been complied with.
- 4.5 A Director's Statement setting out his/ her responsibilities in respect of the data submission, together with the audit (or assurance) report, should also be published on the regulatee's website.

Diagram 2. Summary of proposals

2. Do you agree that the proposals provide for effective charge control compliance monitoring and good regulation?
3. Do you agree that preparing detailed data submissions do not add an incremental cost to regulatees?
4. What are your views on the relative merits of ISAE3000 “reasonable assurance” verses “properly prepared in accordance with...”? Do you believe that ISAE3000 provides a more effective assurance framework? If so, what are the principle reasons?
5. Do you agree that the proposed form of audit report [or assurance report], which states whether the data submission has been “properly prepared in accordance with”, [or states whether the “data submission demonstrates compliance with”] provides a sufficient level of assurance.
6. Do you agree that the proposed publication of the limited data submission, Director’s statement, and audit (assurance) report improves the transparency of the process and provides sufficient assurance to buyers of communications services?
7. Does the limited data submission proposed for publication enable a reasonably well-informed buyer to check charge control compliance?

Application

Charge control compliance Standard

- 4.6 The basis of preparation of the data submissions [and supporting documentation] would be codified into a proposed charge control compliance Standard. These lay out the minimum requirements of regulatees systems and controls for recording and analysing regulated traffic volumes covered by relevant charge control, minimum requirements for the documentation describing those systems and controls used for preparing the data submissions other relevant requirements, including definitions of terms, internal control requirements and proforma documents. Ofcom would publish the Standard and proposes to review it from time to time.
- 4.7 The Standard is central to the proposals. It needs to be carefully prepared as it is the

reference point on which the Auditors would report on compliance. A poorly drafted Standard will deliver poor assurance:

- too detailed and it would increase the costs and limit Auditors' scope to exercise judgement across the different operational and billing systems of the various regulatees.
- too vague and it could create inconsistency among regulatees in the way in which data is collected, processed and presented.
- too restrictive and it could limit the extent to which the compliance procedures can flex to take into account changes to markets or technologies.

- 4.8 Ofcom proposes to use its accounting advisors to assist in drafting the proposed Standard and will informally consult with regulatees before the Standard is published along with the final Statement.

Supporting documentation

- 4.9 In order to apply the proposed Standard, each regulatee will need to produce Supporting Documentation: applying the Standard and setting out details of how the data submission will be compiled and processed. The Supporting Documentation should set out the internal controls to be used to ensure that the data is accurate and complete e.g. cross checking between the billing system and switch data or an analysis to check the consistency with data provided to Ofcom for other purposes.
- 4.10 It is proposed that the regulatee would publish its Supporting Documentation on its website and ensure that it complies with the charge control condition and the Standard. The Auditor will be required to check that the Supporting Documentation is consistent with the Standard, as part of its audit, and set out its findings explicitly in the audit report accompanying the submission.

Appointment of Auditors

- 4.11 If regulatees were to select and appoint the Auditors (likely to be their existing statutory Auditors), it could lead to challenges in achieving a consistent audit approach across regulatees subject to the same charge control. One way for Ofcom to address this could be to appoint the Auditors itself. This is the approach in France and Italy²⁸.
- 4.12 If Ofcom were to appoint the Auditors and they were different from the regulatee's statutory Auditors, there could be duplication of cost regarding audit testing.
- 4.13 Ofcom proposes that regulatees engage and pay the Auditor, with Ofcom retaining the right to require the regulatees to appoint alternative Auditors if there were concerns over consistency or independence.

8. Do you agree that the regulatee should select and pay the Auditor?

²⁸ Para 2.3.2 of the Deloitte report (Annex 8)

Engagement contract with the Auditors

- 4.14 Whilst Ofcom proposes that the regulatee engages the Auditor, for independent verification to be effective, there needs to be a duty of care provided to Ofcom by the Auditor. Several types of contractual arrangements can be drawn up to achieve this²⁹.
- 4.15 Ofcom's current arrangement with BT for its regulatory accounts audit is a modified tri-partite arrangement. The engagement letter for the regulatory accounts is the same for both BT and Ofcom and all the parties (BT, the Auditor and Ofcom) sign the engagement letter. The engagement letter sets out the terms and conditions under which the audit will be carried out and expressly acknowledges the duty of care owed by the Auditor to Ofcom. Ofcom proposes to adopt the same approach for charge control engagements.

9. Do you agree that Ofcom should enter into a modified form of tripartite agreement?

Director's statement

- 4.16 In a Director's statement, a director expressly acknowledges responsibility for preparing the data presented and responsibility for its completeness and accuracy. Ofcom proposes that the director should be an Executive Director (i.e. Main Board Director) of the regulatee. A Director's statement may increase the importance that the regulatee places upon supplying complete, accurate and correctly compiled compliance information. Director's statements are a common requirement for statutory and regulatory accounts and if published, further increase transparency for little additional cost. Ofcom proposes that a statement of responsibility from a Director be included with the data submissions.

10. Do you agree that a signed statement from a Director provides additional assurance?

Conclusion

- 4.17 Ofcom considers that the above proposals meet the attributes of good regulation described above:
- **Intervention and intrusion** – Ofcom's proposals keep the obligations to the minimum necessary to achieve a sufficient level of compliance monitoring.
 - **Transparency** – Publication of key documents ensures the ability of [end-users and buyers] to engage in the process.
 - **Cost effectiveness** – The costs of the proposed obligations should not place an unreasonable burden on regulates.

²⁹ These are set out in figure 6 of the Deloitte report (Annex 8)

Section 5

Proposed amendment to the MCT SMP conditions and legal tests.

Application of the proposals to the MCT controls

- 5.1 Ofcom proposes to introduce the new procedures as quickly as possible as markets or SMP conditions are reviewed. The first charge control to which they will be applied is the wholesale mobile voice call termination (MCT) control.
- 5.2 For the reasons set out in Sections 3 and 4, Ofcom proposes to introduce independent verification requirements in order to ensure that the MNOs comply with their charge control conditions in an effective and transparent manner. In order to implement this, Ofcom proposes to amend the MCT charge control conditions.
- 5.3 The proposed amendments to the condition will require the MNOs to produce detailed and limited data submissions, appoint Auditors to report on compliance with their charge control conditions, and publish the results. They will be required to do this from the first year of the current charge control, which ends on 31 March 2008.

Draft amendments to introduce Condition MA6

- 5.4 The MCT Statement was published on 27th March 2007³⁰. Paragraph 9.236 stated that a consultation looking into monitoring charge control compliance was due to be published in the summer of 2007 and would propose changes to the notifications in the Statement. Draft amendments adding a new condition are set out in Annex 6 on the basis of the preferred option of a “Properly prepared in accordance with...” audit report. Annex 6 also sets out the amendments should the alternative proposal of a “reasonable assurance engagement” report be adopted.
- 5.5 Therefore, on the basis of the approach laid out in Section 4, Ofcom proposes that:
- MNOs should maintain adequate systems for recording traffic volumes in order to be able to produce the data submissions and Supporting Documentation;
 - MNOs should prepare and maintain Supporting Documentation on how data submissions are compiled in order that this can then be provided as part of the compliance process,
 - To demonstrate compliance annually by the end of June³¹, MNOs should:
 - review and update the Supporting Documentation;
 - supply a detailed and limited data submission,
 - supply a statement from an Executive Director stating his/her responsibilities in connection with charge control compliance, and

³⁰ http://www.ofcom.org.uk/consult/condocs/mobile_call_term/statement/statement.pdf

³¹ 90 days following the end of the relevant year. This is typically the length of time regulatees currently have to prepare data submissions.

- supply an audit (assurance) report on the data submission from its Auditor.
- Annually, no more than 30 days after submission to Ofcom, the limited version of the data submission, together with Auditor's and Director's statement should be published by the MNOs on their websites.
- MNOs should appoint Auditors, with a duty of care to Ofcom and that MNOs should endeavour to obtain clarification from the Auditors in regard to the audit (or reasonable assurance engagement) regarding matters as Ofcom may on occasion require.
- In the event that Ofcom considers that an unsuitable Auditor has been appointed it would need a power to intervene. Ofcom will therefore should have the right if, in its opinion, an Auditors is unsuitable, to direct alternative Auditors be appointed.
- In order to maintain high standards of compliance Ofcom can direct the MNOs to amend or restate its Supporting Documentation, data submissions and Audit (Assurance) report if Ofcom believes they are deficient.
- In order to be able to review compliance the MNOs should preserve charge control records for a period of six years.

No material change test

- 5.6 In March 2007, Ofcom published its Statement on mobile call termination³² where it discussed that each of the MNOs has SMP in wholesale mobile voice termination. Given that the Statement was published only 5 months ago and the MNOs continue to have 100% market share in their relevant markets, Ofcom is of the view that there has been no material change since the publication of the Statement to the product markets in effect as a result of the notification made or to the SMP findings. Therefore as there has been no material change since the Statement, Ofcom may amend the relevant SMP condition.

Communications Act tests

- 5.7 Ofcom considers that the draft condition amendment (Annex 6) meets the tests set out in the Act.
- 5.8 Ofcom has considered its duties under section 3 and all the Community requirements set out in section 4 of the Act. In particular, the proposed amendments to the condition are aimed at promoting competition and securing efficient and sustainable competition for the maximum benefit of consumers by ensuring that the charges for mobile call termination are at the level set out in condition MA3 and MA4.
- 5.9 As set out under 47(1) of the Act, in modifying a condition, Ofcom must be satisfied that the test set out under 47(2) has been met. The test is that the modification is:
- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - not unduly discriminatory against particular persons or against a particular description of persons;

³² http://www.ofcom.org.uk/consult/condocs/mobile_call_term/statement/statement.pdf

- proportionate to what it is intended to achieve; and
- transparent in relation to what it is intended to achieve.

5.10 By reference to the explanations provided above, Ofcom considers that the amendment is:

- objectively justifiable as it ensures that the MNOs are required to put in place procedures that ensure Ofcom is able to assess their compliance with their SMP conditions in an effective manner;
- proportionate since the information content remains at the present level. The internal control and documentation requirements add little incremental cost to regulatees who already have documented internal controls. The incremental cost of audit is proportionate considering the revenues covered under the charge control;
- not unduly discriminatory as only the MNOs are able to supply MCT. In due course the requirements will be extended to all charge controls where appropriate;
- transparent in that the proposals and the reasoning behind them are set out in this document.

Section 6

Next Steps

Engagement with stakeholders

- 6.1 Whilst Ofcom is proposing to introduce the new procedures to MCT first, the principles will apply to all actively monitored charge controls. A well-written Standard is vital to the success of the proposed monitoring regime. Ofcom proposes to produce the Standard with assistance from its accounting advisors. Ofcom intends to actively engage with the stakeholders concerned during the consultation process in order to ensure that the Standard is practical and appropriate.
- 6.2 Consultation on the proposals in this document closes on 23 October, 2007. When Ofcom has considered the representations made in response to the proposals set out in this document, it will publish a Statement and charge control compliance Standard in early 2008 that will give effect to its proposals.

Implementation and timetable

- 6.3 If these proposals are adopted for MCT, the MNOs will need to have their Supporting Documentation in place by 31st March 2008. Following publication of the Statement in early 2008, Ofcom proposes to hold workshops with the MNOs (and their Auditors if required) to help them implement any new procedures.
- 6.4 For all other charge controls that Ofcom actively monitors, the proposals (if appropriate) will be introduced via SMP conditions as and when the SMP charge control reviews fall due. The current timetable is:

Market Review	Expected review (consultation publication)
Leased lines (BT)	Autumn 2007
WLR and LLU (BT)	Later this year
NTS retail uplift	2009
NCC	2009

11. Is Ofcom doing enough to help stakeholders implement the proposed procedures?

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 23 October 2007**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/compliance/howtorespond/form> , as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email gary.carey@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Gary Carey
Competition Finance
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4103
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Gary Carey on 020 7783 4393.

Confidentiality

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

such parts in a separate annex.

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

Next steps

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

Ofcom's consultation processes

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

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

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

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

Before the consultation

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

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest. Ofcom's guidelines on consultation processes³³ do however anticipate the possibility of shorter consultation periods. In this case Ofcom is providing a consultation period of [6] weeks because:

- the community of interested parties is relatively small;
- the proposals affect a particular group of companies subject to charge controls;
- the proposals will have a limited effect on the relevant markets.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

³³ http://www.ofcom.org.uk/consult/consult_method/consult_guide.pdf

Annex 3

Consultation response cover sheet

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

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

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

DECLARATION

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

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

☐

Name

Signed (if hard copy)

Annex 4

Consultation questions

1. *Do you agree that additional measures to ensure that charge control compliance submissions are properly prepared and independently assured are necessary?*
2. *Do you agree that the proposals provide for effective charge control compliance monitoring and good regulation?*
3. *Do you agree that preparing detailed data submissions do not add an incremental cost to regulatees?*
4. *What are your views on the relative merits of ISAE3000 “reasonable assurance” versus “properly prepared in accordance with...”? Do you believe that ISAE3000 provides a more effective assurance framework? If so, what are the principle reasons?*
5. *Do you agree that the proposed form of audit report [or assurance report], which states whether the data submission has been “properly prepared in accordance with”, [or states whether the “data submission demonstrates compliance with”] provides a sufficient level of assurance.*
6. *Do you agree that the proposed publication of the limited data submission, Director’s statement, and audit (assurance) report improves the transparency of the process and provides sufficient assurance to buyers of communications services?*
7. *Does the limited data submission proposed for publication enable a reasonably well-informed buyer to check charge control compliance?*
8. *Do you agree that the regulatee should select and pay the Auditor?*
9. *Do you agree that Ofcom should enter into a modified form of tripartite agreement?*
10. *Do you agree that a signed statement from a Director provides additional assurance?*
11. *Is Ofcom doing enough to help stakeholders implement the proposed procedures?*

Annex 5

Impact Assessment

Introduction

- A5.1 The analysis presented in this Annex represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act).
- A5.2 This section contains an impact assessment of the options and the proposals made in this document relating to compliance with the charge controls on mobile operators designated with SMP in wholesale mobile voice call termination. This is not an impact assessment of the charge controls itself, which were already discussed in the statement published by Ofcom in March 2007³⁴. The proposals made in this document are explained in Sections 4 and 5 above.
- A5.3 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.4 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 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 our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

The citizen and/or consumer interest

- A5.5 Charge controls have been imposed on SMP providers to ensure that the wholesale services supplied by them are not provided at excessively high prices affecting competition in downstream markets. In monitoring compliance with the charge controls, however, Ofcom's check on prior year volume weights is not adequate as it lacks the information to verify these weights. This information asymmetry can mean that there is a risk that operators' compliance is not being monitored effectively, leaving consumers with the risk of higher prices. Although no significant breaches have been discovered, the levels of errors, late returns and disputes have increased. Monitoring compliance with charge controls is necessary to ensure that consumers can benefit from regulation.
- A5.6 The particular proposals made in this document ensure that Ofcom can receive assurance that mobile operators are complying with the charge control. It will also ensure that purchasers of wholesale services are able to reconcile the prices they pay to the average weighted charge, and assure themselves that they benefit from the regulation imposed on them. In competitive markets these benefits are likely to flow to consumers as well.

³⁴ http://www.ofcom.org.uk/consult/condocs/mobile_call_term/statement/statement.pdf

Ofcom's policy objective

- A5.7 Ofcom's objective is to ensure that an effective monitoring regime is in place to ensure compliance with the charge controls particularly as it has become increasingly evident that charge control monitoring has not kept up with the increasing diversity and complexity of the charge controls being introduced. Ofcom's view is that MNOs may need to have their Supporting Documents in place around March/ April 2008, in order to assist a timely audit. Following publication of the Statement Ofcom proposes to hold workshops with the MNOs and their auditors if required to help them implement the new procedures.

Analysis of the options considered

- A5.8 Currently, Ofcom receives spreadsheet returns from operators to demonstrate compliance with each price and charge control. There is no requirement for audit. The form and content of such returns varies from operator to operator and there is no standardisation or requirement for consistency, either between one year and the next or between operators.
- A5.9 Ofcom is able to perform only basic checks on this information, and breaches may take longer to detect. The consequence of this is that, given the significant level of revenues from mobile call termination (in the case of MCT, termination revenues are estimated at around £2.5 billion³⁵), even a small departure from compliance can mean that mobile customers are overcharged a significant amount.
- A5.10 The options considered in this document have the aim of providing greater assurance of compliance and providing transparency regarding the operation of the charge controls. There are different options considered for the level of assurance, information provision to Ofcom and the level of disclosure of that information.
- Five options identified by Deloitte's report have been considered for effective monitoring through levels of assurance; (a) "agreed upon procedures", (b) "limited assurance engagement report", (c) "reasonable assurance engagement report", (d) "properly prepared in accordance with" and (e) "fairly present". The audit and assurance options differ in the level of assurance that would be provided and the amount of information that needs to be provided.
 - Two options have been identified for the provision of information; (a) detailed data submission, and (b) limited data submission. The options differ in the volume of information that operators need to provide for assurance.
 - Three options have been identified for transparency and disclosure; (a) no publication of any information, (b) publication with no numbers, and (c) publication with numbers. The three options differ in the level of disclosure that will be required by the mobile operators.
- A5.11 The tables below discuss the benefits and costs and risks of all the above options considered.

³⁵ http://www.ofcom.org.uk/consult/condocs/mobile_call_term/statement/statement.pdf
Paragraph 2.17, page 7.

Option Assessment - levels of assurance opinion

Option	Benefits	Risks/Costs
<p>“Agreed upon procedures”</p> <p>- An Auditor is able to perform mechanical tests against Ofcom’s checklist.</p>	<ul style="list-style-type: none"> • Independent assessment of compliance. • Limited level of assurance achieved relative to status quo. 	<ul style="list-style-type: none"> • Information asymmetry means benefits may not be achievable as Ofcom may not be able to specify details of the tests accurately. • Auditor only tests the letter and not spirit of compliance; does not use professional judgement in reporting compliance. • Costs likely to be significantly less than £150,000 per annum to operate.
<p>“Limited assurance engagement report”</p> <p>- Enables the auditor to conclude that nothing has come to the auditor’s attention that would cause the auditor to believe that the operator had not complied with the charge control. The auditor would need to obtain sufficient and appropriate evidence to form such a conclusion.</p>	<ul style="list-style-type: none"> • Risk of forming an incorrect conclusion is less than above. • Provides Ofcom with knowledge of when breaches of compliance may be taking place. 	<ul style="list-style-type: none"> • Does not provide Ofcom with the confidence it is seeking from the new regime. • SAE3000 does not differentiate sufficiently between the level of work in a reasonable and limited assurance report and hence may lead to inconsistent approaches in reporting. • Imposes costs and interventionist because of the level of assurance required, but costs likely to be less than £150k for an average MNO.
<p>Reasonable assurance engagement report”</p> <p>- Auditor obtains sufficient and appropriate evidence, assesses risks of misstatement, developing responses to provide a positive conclusion.</p>	<ul style="list-style-type: none"> • Risk of forming an incorrect conclusion is lower than the limited assurance engagement above. • Positive conclusion possible because of clearly linked procedures on compliance • Close proximity of the regulatee’s books and records allows a better assurance than if Ofcom were to undertake assurance. 	<ul style="list-style-type: none"> • ISAE3000 does not differentiate sufficiently between the level of work in a reasonable and limited assurance report and hence may lead to inconsistent approaches in reporting. • Imposes costs and interventionist because of the level of assurance required, but costs still likely to be less than £150k for an average MNO

Option (cont.)	Benefits (cont.)	Risks/Costs (cont.)
<p>“Properly prepared in accordance with”</p> <ul style="list-style-type: none"> - Ofcom sets a Standard for operators who will prepare supporting documents codifying the procedures to be followed. - Auditor checks supporting documents against the Standard and submission in accordance with Supporting Documents 	<ul style="list-style-type: none"> • The Standard directs Auditors on areas to focus; Auditor has the proximity to assess the effectiveness of the Supporting Documents • Auditor uses their professional judgement to opine on the submission • Process reports on the spirit of compliance. 	<ul style="list-style-type: none"> • Could be perceived by operators as too intrusive and burdensome; however this is mitigated by the fact that as purchasers from each other they have a greater degree of assurance regarding compliance. • Costs likely to be less than £150,000.
<p>“Fairly present”</p> <ul style="list-style-type: none"> - Similar to “properly prepared in accordance with”, but where the Auditor can use their own judgement in making the assessment of compliance. In particular an Auditor can apply a “fairly present override” to state in their opinion the full statutory or regulatory statements are ‘compliant’ for the purposes of charge control compliance even where there are significant departures from the Standard. 	<ul style="list-style-type: none"> • Potentially the highest level of assurance possible 	<ul style="list-style-type: none"> • The ‘true and fair’ override puts too much judgement in the hands of the Auditors and may risk Ofcom’s regulation being inappropriately assessed. • Can only be used on full statutory or full regulatory financial statements. These are significantly more costly to produce and audit than data submissions, particularly for the MNOs.

Option Assessment – Information

Option	Benefits	Risks/Costs
Detailed data submission	<ul style="list-style-type: none"> • Ofcom will receive the detailed data necessary for monitoring charge control compliance. • As operators already produce an un-audited detailed data submission, this option will not require additional resources. 	<ul style="list-style-type: none"> • Operators may perceive a risk in providing a level of information that may potentially be published.
Limited data submission	<ul style="list-style-type: none"> • Can potentially be published 	<ul style="list-style-type: none"> • Further information may be required to deal with disputes or concerns

Option Assessment – Publication

Option	Benefits	Risks/Costs
<p>No publication (status quo)</p> <p>- Ofcom receives the submission and reports in private.</p>	<ul style="list-style-type: none"> Ofcom will be able to publicly report that operators have complied with the regulation and that it continues to monitor compliance. 	<ul style="list-style-type: none"> Lack of transparency regarding compliance – Ofcom's objective of open and transparent regulation not met.
<p>Publication with no numbers</p> <p>- Ofcom receives the submission and reports in private but would require providers to publish statement on compliance. This would be signed by an Executive Director</p>	<ul style="list-style-type: none"> Director's sign-off would seek to confirm compliance and provide limited assurance regarding compliance, although not independent. Operators may see benefits in not revealing complete information to third parties 	<ul style="list-style-type: none"> Auditors unlikely to allow the audit/assurance report itself to be published without the underlying data. The process remains essentially private without complete disclosure to third parties and buyers and hence does not completely meet the objective of openness and transparency
<p>Publication with numbers</p> <p>- Providers would be required, as a minimum to provide information for a buyer to be able to reconcile published prices to the Charge Control price – this includes day part prices published in the Charge Control year and the day part traffic weights for the corresponding period in the preceding year.</p>	<ul style="list-style-type: none"> Disciplines the operators to provide correct data submission. Increases the reputational risk of both the auditors and the operator. Increases accountability as buyers can scrutinise the numbers. Increases confidence as buyers see that charge controls are effective and increases the perception of assurance The process is open and transparent 	<ul style="list-style-type: none"> Operators might be concerned that publishing information on traffic weights can be commercially sensitive and risky – however this perceived risk may be small because: <ul style="list-style-type: none"> the charge control regulation only requires information that is at least 15 months out of date time of day profiles are an average of all fixed and mobile termination on the operator's network and do not reveal termination from any specific operator. it is unlikely that this level of aggregation could provide information significantly advantageous to other competitors

The Preferred option

A5.12 Based on the above impact analysis of the different options, Ofcom is of the view that independent audit reporting in compliance monitoring is a basic requirement in any monitoring process. Ofcom has considered options for audit reporting and is of the view that the costs of any of the options are not significant. The benefits however can be significant in that they provide Ofcom with assurance that the charge control obligations are being complied with, purchasers are able to reconcile the charges they pay with the obligation, and monitoring in general will provide greater transparency to Ofcom's remedies and will help in detecting breaches.

A5.13 On balance, the "properly prepared in accordance with" with Director's sign-off appears to be marginally more effective than a Reasonable Assurance report. Ofcom's preferred options are the following:

- (i) To continue to require regulatees to submit a detailed data submission in line with timescales included in the charge control conditions.
- (ii) To also require regulatees to provide at the same time, a limited data submission.
- (iii) To provide a level of assurance by requiring independent auditors to submit a report stating that the submission has been "properly prepared in accordance with" the Ofcom produced Standard.
- (iv) To require a statement from an Executive Director of the regulatee acknowledging responsibility for preparing the data presented and responsibility for its completeness and accuracy. This approach in (i) to (iv) above appears to be the most effective as it provides the required benefit of compliance with the spirit of the regulation without being unduly burdensome.
- (v) To also require regulatees to publish these documents (ii), (iii) and (iv) on their website. Ofcom considers that in order to improve transparency and bring discipline to the process, operators would have to publish certain data on day part charges and day part traffic weights to enable buyers to check compliance for themselves. This data should be published as a limited data submission since such a submission has the advantage of minimising any concerns that operators might have with revelation of commercially sensitive information.

A5.14 Below is a table showing the distribution of costs and benefits of the proposed preferred (audit report) option and the alternative (reasonable assurance report) option.

Proposal – Expected distribution of costs and benefits

Option	Costs		Benefits	
	Operators	Consumers	Ofcom/buyers	Wider Consumers
<u>Preferred</u> Assurance Opinion – “Properly prepared on accordance with...”	Incremental cost of audit. Likely to be significantly less than £150k	Audit costs potentially passed on through higher retail charges. Minimal in face of £13bn UK retail revenue.	Ofcom – Operate a more effective compliance monitoring regime. Buyers (and potential buyers) of MCT - Confidence that are paying regulated rate.	Benefits of more effective monitoring may be passed on in lower prices increased confidence of correct rates being passed through.
<u>Alternative</u> Assurance Opinion – ISAE3000 Reasonable Assurance report	As above, costs may be slightly lower.	As above	As above, may be less confidence due to unfamiliarity of Assurance report	As above, may be less confidence due to unfamiliarity of Assurance report
Information – Detailed and Limited	None - information already produced	N/A	Ofcom – Allow Ofcom to understand how MNOs comply with their charge controls.	N/A
Publication with numbers.	Publication of limited submission only avoids revealing (materially) commercially sensitive data.	N/A	Buyers (and potential) of MCT - Confidence from seeing audit report, directors statement and re-performing calculations for themselves.	Confidence from seeing audit report and directors statement. Can re-performing calculations for themselves. Publication of limited submission only also avoids risk of dampening competition

Annex 6

Notification and Draft Condition MA6 of the Calls to MCT Statement

Notification under sections 48(2) and 86 of the Communications Act 2003

Proposals for the modification of SMP services conditions in relation to mobile call termination for the purposes of monitoring price controls

WHEREAS:

1. OFCOM hereby make in accordance with sections 48(2) and 86(1) of the Act the following proposals for the modification of SMP services conditions in relation to mobile call termination by reference to market power determinations made in relation to markets in which OFCOM are satisfied there has been no material change since those determinations were made.
2. The proposals contained in this Notification are further to the market power determinations made in notifications under section 79 of the Act by OFCOM on 27 March 2007 whereby H3G, O2, Orange, T-Mobile and Vodafone were determined to have significant market power in product markets in effect as a result of those notifications.
3. As a result of, amongst other things, the market power determinations referred to in paragraph 2 above, H3G, O2, Orange, T-Mobile and Vodafone have been subjected to a number of SMP services conditions, including SMP services conditions imposing price controls. OFCOM are proposing to modify these SMP services conditions by adding new provisions concerning the monitoring of compliance with price controls as set out in the Schedule to this Notification.
4. The effect of, and OFCOM's reasons for making, the proposals referred to in paragraph 3 above is set out in the accompanying explanatory statement.
5. OFCOM consider that the proposals referred to in paragraph 3 above comply with the requirements of sections 45 to 50 and sections 78 to 92 of the Act, as appropriate and relevant to each of the proposals.
6. In making the proposals set out in this Notification, OFCOM have considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
7. Representations may be made to OFCOM about the proposals set out in this Notification and the accompanying explanatory statement by [DATE].
8. Copies of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50(1)(a), and to the European Commission and the regulatory authorities of every other Member State in accordance with

section 50(3) of the Act.

9. Save for the purposes of paragraph 2 of this Notification and except as otherwise defined in this Notification, any word or expression shall have the same meaning as it has in the Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

10. In this Notification:

“Act” means the Communications Act 2003;

“H3G” means Hutchison 3G (UK) Limited (registered company number 3885486) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act);

“the Notification” means the notification referred to in paragraph 2 of this Notification;

“O2” means O2 Limited (registered company number 1743099) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act);

“Orange” means Orange Personal Communications Services Ltd (registered company number 2178917) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act);

“T-Mobile” means T Mobile Limited (registered company number 2382161) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act);

“United Kingdom” has the meaning given to it in the Interpretation Act 1978 (c. 30); and

“Vodafone” means Vodafone Limited (registered company number 1471587) including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 (or any subsequent amendment or replacement Act).

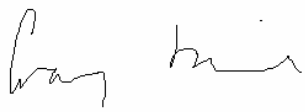
11. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

12. For the purpose of interpreting this Notification:

(a) headings and titles shall be disregarded; and

(b) the Interpretation Act 1878 (c. 30) shall apply as if this Notification were an Act of Parliament.

13. The Schedule to this Notification shall form part of this Notification.

A handwritten signature in black ink, appearing to read 'Craig Lonie', is positioned above the printed name.

Craig Lonie

DIRECTOR OF COMPETITION FINANCE

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

[DATE]

Schedule

Condition MA6 – Audit requirement

MA6.1 The Dominant Provider shall at all times ensure that its procedures, systems, processes and internal controls for recording and analysing terminated traffic volumes covered by Conditions MA3 and MA4 are compliant with the Charge Control Compliance Standard.

MA6.2 The Dominant Provider shall prepare and maintain documentation (the “Supporting Documentation”) containing a detailed and complete description of the procedures, systems, processes and internal controls for preparing the information contained in the Data Submission and the Detailed Data Submission in accordance with the Charge Control Compliance Standard.

MA6.3 The Dominant Provider shall, in respect of each Relevant Year:

- (a) maintain the Supporting Documentation in accordance with this Condition and the Charge Control Compliance Standard
- (b) prepare the Data Submission in accordance with this Condition, the Charge Control Compliance Standard and the Supporting Documentation;
- (c) prepare a Director’s Statement;
- (d) procure an [Audit Opinion stating that the Data Submission has been properly prepared in accordance with the Charge Control Compliance Standard and the Supporting Documentation] [Assurance Opinion stating that the Data Submission demonstrates compliance with the Charge Control Compliance Standard and the Supporting Documentation in all material respects]; and
- (e) prepare the Detailed Data Submission in accordance with this Condition, the Charge Control Compliance Standard and the Supporting Documentation.

MA6.4 The Dominant Provider shall:

- (a) deliver to Ofcom within 90 days of the end of each Relevant Year copies of the Data Submission, Detailed Data Submission, Supporting Documentation, [Audit Opinion] [Assurance Opinion]³⁶ and Director’s Statement;
- (b) publish the Data Submission, Supporting Documentation, [Audit Opinion] [Assurance Opinion] and Director’s Statement within 120 days of the end of each Relevant Year, together with any written statement made by Ofcom and provided to the Dominant Provider commenting on the Data Submission and Supporting Documentation.

MA6.5 The Dominant Provider shall

- (a) ensure that the engagement letter with the Auditor includes provisions acknowledging the acceptance by the Auditor that, in forming and/or expressing any [Audit] [Assurance] Opinion pursuant to this Condition, the Auditor shall owe a duty of care to Ofcom

³⁶ As explained in the main body of the consultation an Audit Opinion is currently the preferred option but Ofcom also recognises the potential benefits of using an Assurance Opinion.

(but not directly or indirectly to any other third party) in respect of its [Audit] [Assurance] work, [Audit] [Assurance] report and [Audit] [Assurance] opinion, consistent with ICAEW Guidance 05/03.

(b) use its best endeavours to obtain from the Auditor any further explanation and clarification of any [Audit] [Assurance] Opinion and any other information in respect of the matters which are the subject of that [Audit] [Assurance] Opinion as Ofcom shall require.

MA6.6 The Auditor that the Dominant Provider from time to time appoints shall at all times be satisfactory to Ofcom having regard to such reasonable matters as Ofcom considers appropriate. The Dominant Provider shall notify Ofcom in writing of the Auditor appointed to secure compliance with this Condition before the Auditor carries out any work for that purpose. The Dominant Provider shall notify Ofcom of any proposed change of Auditor at least 28 days before effect is given to that change.

MA6.7 In the event that the Auditor is in the opinion of Ofcom unsatisfactory, the Dominant Provider shall appoint and instruct an Alternative Auditor that is at all times satisfactory to Ofcom having regard to such reasonable matters as Ofcom considers appropriate. The Dominant Provider shall ensure that the Alternative Auditor:

- (a) carries out such on going duties as are required to secure compliance with this Condition;
- (b) carries out work or further work, in addition to that performed by the former Auditor, in relation to such matters connected to compliance with this Condition as are of concern to Ofcom; and/or
- (c) re-performs work previously performed by the former Auditor in relation to such matters connected to compliance with this Condition as are of concern to Ofcom.

MA6.8 Where Ofcom have reasonable grounds to believe that any or all of the [Audit] [Assurance] Opinion, Data Submission, Detailed Data Submission or Supporting Documentation are deficient, the Dominant Provider shall, where directed by Ofcom:

- (a) amend the relevant document in order to remedy the deficiencies identified by Ofcom;
- (b) restate the document identified by Ofcom as requiring restatement in accordance with the documents, where necessary, been amended pursuant to subparagraph (a);
- (c) secure in accordance with any relevant direction of Ofcom under this Condition the expression of an [Audit] [Assurance] Opinion on the restated documents;
- (d) deliver to Ofcom the restated documents and corresponding [Audit] [Assurance] Opinion; and
- (e) publish the restated documents and corresponding [Audit] [Assurance] Opinion as directed by Ofcom.

MA6.9 The Dominant Provider shall preserve records sufficient to provide an adequate explanation of each Data Submission and Detailed Data Submission for a period of six years from the date on which such submissions are delivered to Ofcom.

MA6.10 Publication of information in Condition MA6.4 shall be effected by

- (a) placing a copy of the relevant information on any relevant website operated or controlled by the Dominant Provider; and
- (b) sending a copy of the relevant information to any person at that person's written request.

MA6.11 In this Condition:

“Alternative Auditor” means any Auditor not for the time being appointed as the Dominant Provider's Auditor;

["Audit Opinion"] means an opinion made by an Auditor in accordance with International Standard on Auditing (UK and Ireland) 700 that the data submission has been 'properly prepared in accordance with the charge control compliance standard and the supporting documentation;]

["Assurance Opinion"] means a reasonable assurance opinion made by an Auditor in accordance with International Standard on Assurance Engagements 3000]

“Auditor” means the Auditor for the time being appointed by the Dominant Provider in accordance with the requirements of the Companies Act 1985 as amended by the Companies Act 1989;

“Charge Control Compliance Standard” means the document issued from time to time by Ofcom which describes:

- (a) the minimum requirements of the Dominant Provider's procedures, systems, processes and internal controls for recording and analysing terminated traffic volumes covered by Conditions MA3 and MA4
- (b) the minimum requirements for the documentation describing the procedures, systems, processes and internal controls used for preparing the information contained in the Data Submission and the Detailed Data Submission;
- (c) any other relevant requirements, including definitions of terms, internal control requirements and proforma documents for Data Submissions, Detailed Data Submissions and [Audit] [Assurance] Opinions.

“Data Submission” means a submission demonstrating compliance in respect of Condition MA3.1 and MA4.1 in the form described in the Charge Control Compliance Standard;

“Detailed Data Submission” means a submission containing, in addition to the information in the Data Submission, time of day volumes and revenues on a monthly basis in the form described in the Charge Control Compliance Standard;.

“Director's Statement” means a written statement, signed by an Executive Director who sits on the Dominant Provider's main Board, that states his or her responsibilities in relation to ensuring compliance with condition MA3 and MA4 and preparing the Data Submission in accordance with this Condition.

“ICAEW Guidance 05/03” means Technical Release - Audit 05/03 issued by The Institute of Chartered Accountants in England and Wales .

“Supporting Documentation” has the meaning described in Condition MA 6.2.

Annex 7

Forms of data submission

A7.1 Detailed Data Submission (on following page)

Monitoring compliance with charge controls

XYZ plc - Mobile Call Termination Detailed data submission for the relevant year to March 200z

200x/y												200y/z											
Apr 0x	May 0x	Jun 0x	Jly 0x	Aug 0x	Sep 0x	Oct 0x	Nov 0x	Dec 0x	Jan 0y	Feb 0y	Mar 0y	Apr 0y	May 0y	Jun 0y	Jly 0y	Aug 0y	Sep 0y	Oct 0y	Nov 0y	Dec 0y	Jan 0z	Feb 0z	Mar 0z

Traffic by time of day (m)

Day	100.00	100.00	101.00	102.00	103.00	104.00	105.00	106.00	107.00	108.00	109.00	110.00	111.00	112.00	113.00	114.00	115.00	116.00	117.00	118.00	119.00	120.00	121.00	122.00
Evening	100.00	100.00	102.00	104.00	106.00	108.00	110.00	112.00	114.00	116.00	118.00	120.00	122.00	124.00	126.00	128.00	130.00	132.00	134.00	136.00	138.00	140.00	142.00	144.00
Weekend	100.00	100.00	103.00	106.00	109.00	112.00	115.00	118.00	121.00	124.00	127.00	130.00	133.00	136.00	139.00	142.00	145.00	148.00	151.00	154.00	157.00	160.00	163.00	166.00
Total	300.00	300.00	306.00	312.00	318.00	324.00	330.00	336.00	342.00	348.00	354.00	360.00	366.00	372.00	378.00	384.00	390.00	396.00	402.00	408.00	414.00	420.00	426.00	432.00

Termination prices by time of day

Day	5.00	5.00	5.00	5.00	5.00	5.00	5.10	5.10	5.10	5.10	5.10	5.10	5.20	5.20	5.20	5.20	5.20	5.20	5.30	5.30	5.30	5.30	5.30	5.30
Evening	5.00	5.00	5.00	5.00	5.00	5.00	5.10	5.10	5.10	5.10	5.10	5.10	5.20	5.20	5.20	5.20	5.40	5.40	5.10	5.10	5.10	5.10	5.10	5.10
Weekend	5.00	5.00	5.00	5.00	5.00	5.00	5.10	5.10	5.10	5.10	5.10	5.10	5.60	5.60	5.60	5.60	5.60	5.60	5.50	5.50	5.50	5.50	5.50	5.50

Charge control variables

	200x/y	200y/z
AIC	5.25	5.33
Ave. revenue	5.34	
WAF	1.00	1.02
TAC	6.31	6.42
AIC - TAC	-0.98	-1.09

Figures are illustrative

A7.2 Limited Data Submission

XYZ plc - Mobile Call Termination limited data submission for the relevant year to March 200z

200x/y		200y/z	
Apr - Sept 0x	Oct -March 0y	Price period 1 Apr - Sep 0y	Price Period 2 Oct -March 0z

Traffic weight by time of day (%)

Day	0.33	0.31	0.30	0.29
Evening	0.33	0.33	0.33	0.33
Weekend	0.34	0.36	0.37	0.38
Total	1.00	1.00	1.00	1.00
Volumes in period (m)	1,860	2,070	2,286	2,502

Termination prices by time of day - Published already

Day	5.00	5.10	5.20	5.30
Evening	5.00	5.10	5.27	5.10
Weekend	5.00	5.10	5.60	5.50

Charge control variables

	200x/y	200y/z
AIC	5.25	5.33
Ave. revenue	5.34	
WAF	1.00	1.01680
TAC	6.31	6.42
AIC - TAC	-0.98	-1.09

Figures are illustrative

Annex 8

Deloitte Report



Assessment of Charge Control

Compliance Options

A Report for Ofcom

21st August 2007

Important notice

This report has been prepared in accordance with the terms of our contract dated 17 April 2007 and on the basis of the scope and limitations as set out below.

The report has been prepared solely for the purposes of assisting Ofcom in evaluating the potential range of compliance options for charge controls applied to fixed line and mobile network operators (MNOs) and the pros and cons associated with each option. Deloitte is expressly not providing an opinion on which option should be employed by Ofcom.

The distribution of this document to other parties is subject to the restrictions on use specified in the Engagement Letter and the Thought Partner terms and conditions that have been signed by Ofcom and Deloitte. We have agreed that Ofcom may publish this report as part of its proposed consultation process on amendments to charge control compliance procedures. However, no other party is entitled to rely on this document for any purpose whatsoever and we accept no responsibility or liability to any other party, other than Ofcom, in respect of the contents of the Report. Deloitte & Touche LLP accepts no responsibility for any reliance that may be placed on this document should it be used by any party other than the Recipient Parties or for any purpose that is not in accordance with the terms of the Engagement Letter.

The scope of our work has been limited by the time, information and explanations made available to us. We have relied upon the documents and data provided by Ofcom and other regulatory bodies in the UK and overseas. We have no responsibility for the accuracy or completeness of this information and have not reviewed its overall reasonableness.

Our work and our findings do not in any way constitute a recommendation as to whether Ofcom should or should not proceed with any changes to the compliance regime. In particular, we draw Ofcom's attention to the fact that if we were to perform additional procedures then other matters might come to our attention that might be relevant to views on the pros and cons of various compliance options. Similarly, if others were instructed to conduct appropriate independent procedures, other relevant matters might come to light.

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1 Context

In this section we set out Ofcom's objectives in re-designing the charge control compliance regime and the scope of our report.

1.1 Ofcom Objectives

Operators designated as holding significant market power (SMP) in a particular service, or set of services, may be subject to regulatory remedies on price. These remedies are referred to as charge controls. These controls are intended to allow the operator to achieve a reasonable return on capital employed (ROCE). This is traditionally referred to as normal economic profit and refers to the setting of a price that permits the operator to recover its (efficient) operating costs plus a return on capital employed, where the allowed return is typically set using its regulated weighted average cost of capital (WACC).

A charge control may be set for a single year or for multiple years. For example:

- BT Wholesale /Openreach is permitted to set its wholesale charges on an annual basis or as a single unchanged price for several years (e.g for local loop unbundling); and
- Mobile network operators are subject to a multiple year price cap on mobile termination rates. The charge is set to "glide" towards a cost-orientated rate over a set period of time.

A key part of the charge control is the compliance mechanism. This is the framework through which the regulator requests compliance data from the operators, defines the set of information which is requested and sets out or undertakes the checks which are required to ensure the information is correct.

Ofcom is currently reviewing the compliance procedures relating to charge controls that are applied to fixed line operators (FLOs) and mobile network operators (MNOs). Specifically, Ofcom is focussing on the compliance procedures that will be applied to the mobile call termination charge control¹, and is seeking to improve the degree of assurance that it has over the data that are provided by the MNOs. Ofcom is therefore proposing to publicly consult on a new charge control compliance regime which may require amendments to the data provided by the MNOs and the degree of assurance. Ofcom intends that our report will consider a range of potential compliance options which will form the basis of its public consultation.

1.2 Our scope

Ofcom has commissioned Deloitte to provide specific elements of support during its mobile charge control compliance consultation process. This includes:

- Producing this short report that considers details of potential compliance processes;
- Support in preparing for meetings with operators, where appropriate; and
- Options for regulatory accounting guidelines.

¹ As set out in Annex 20 of Ofcom's mobile call termination statement, 27th March 2007

In the specific context of the report on potential compliance processes, Ofcom commissioned Deloitte to produce a report that considers a number of benchmark compliance processes drawn from other regulated utilities in the UK and international fixed and mobile telecommunication sectors. Using this set of benchmarks as a reference point, Deloitte was commissioned to:

- Present a list of potential compliance options for Ofcom;
- Undertake a high level assessment of their relative merits; and
- Estimate indicative implementation costs for each.

Our analysis is based on interviews and discussions with National Regulatory Authorities (NRAs) in the UK, a questionnaire sent to selected telecommunication regulators in Europe, desk research and discussions with international Deloitte colleagues who specialise in a range of regulated utilities.

Our report is set out as follows:

- Section 2 provides the background to charge control compliance in the UK telecommunications sector and other regulated sectors;
- Section 3 contains the range of potential compliance monitoring options available to Ofcom, focussing on both data to be requested and degree of assurance; and
- Section 4 sets out our assessment of each of the compliance monitoring options in terms of its relative costs and benefits.

Annexes to this report provide case studies on compliance procedures used by:

- Other UK regulatory authorities; and
- Compliance procedures used by telecommunication authorities overseas.

1.3 Contact details

If you have any questions in relation to this report, please do not hesitate to contact:

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2 Introduction to Charge Control Compliance

In this section, we provide a summary of charge control compliance procedures that are currently undertaken by telecommunication operators and regulated utilities in the UK and internationally. We also provide details of the statutory reporting process and the links between this and the regulatory accounts.

2.1 Links between charge control compliance and regulatory accounts

Regulated utilities are often required to provide regulatory accounts. In telecommunications, these are typically presented on a fully allocated cost (FAC) and long run incremental cost (LRIC) basis using current cost accounting (CCA). These accounts provide details of costs and revenues separately for the wholesale and retail regulated markets/products within the entity. This information could be used for charge control compliance purposes if:

- The regulated portion is further disaggregated to the level required by the charge control. This is typically at the product level as opposed to product families or markets;
- The information provided in the accounts includes all information necessary to demonstrate compliance (mainly volume and revenue data); and
- The reporting period covered by the regulatory accounts is aligned with the period for which compliance information is required. In cases where the charge control commences before the start of the regulatory year, it is possible to set the first compliance period to be less than a year and then to align the compliance year with the regulatory reporting year from period two onwards.

We understand that BT's regulatory accounts are not used for charge compliance purposes as: (i) historically the product disaggregation has been at a higher level than that on which individual charge controls are set; (ii) the charge control year is not aligned with the regulatory reporting year; and (iii) some controls use subsets of data that may require separate modelling that is not subject to normal reporting conventions.

Should Ofcom choose to require other operators to produce regulatory accounts, then the regulatory accounting guidelines (RAGs) could be written to ensure the accounts provide sufficient information for charge control purposes.

2.2 Links between charge control compliance and statutory accounts

As publicly listed companies, most regulated operators in the UK are required to provide statutory accounts detailing their financial activities. These are prepared in accordance with International Financial Reporting Standards (IFRS)² and, if the company is listed in the US, with US GAAP and Sarbanes-Oxley (SOX) requirements³. The statutory accounts are audited in accordance with the

² IFRS are issued by the International Accounting Standards Board (IASB) and replace the International Accounting Standards (IAS)

³ Requirements in relation to internal financial controls

International Standards of Auditing (ISA). The figure below summarises the statutory financial reporting requirements faced by major telecommunications operators in the UK.

Figure 1: Current information requirements

Operator	Accounting Standards	Auditing Standards
BT	IFRS, US GAAP, SOX	ISA
H3G (Hutchinson Whampoa)	IFRS	ISA
Orange (France Telecom)	IFRS, US GAAP, SOX	ISA
O2 (Telefonica)	IFRS, US GAAP, SOX	ISA
T-Mobile (Deutsche Telekom)	IFRS, US GAAP, SOX	ISA
Vodafone	IFRS, US GAAP, SOX	ISA

Source: Deloitte

However, the usefulness of these statutory accounts for the purposes of ensuring compliance with price cap regulation is very limited:

- Statutory accounts do not contain the level of detail necessary to determine whether or not an operator has complied with its price cap regulations;
- Results are not disaggregated between different services and service volume data are not provided. Therefore, it is not possible to calculate unit prices;
- Statutory accounts often cover different time periods from the control period; and
- An audit of statutory accounts will include an assessment of whether an entity is complying with laws and regulations⁴. However, as the impact of non-compliance with price control is likely to have a relatively low impact on the overall financial performance then the level of procedures performed is relatively low. Therefore this auditing requirement is unlikely to be sufficient for a regulator to rely on for charge control compliance purposes

Nevertheless, in order to meet SOX requirements, companies are required to evaluate and disclose the effectiveness of their internal controls over financial reporting and these must be “attested” by Independent Auditors. Companies complying with IFRS requirements must report various financial transactions according to these international accounting standards. As such, where regulatory submissions can be reconciled with statutory accounts, some limited assurance can be taken over the level of accuracy of the data.

2.3 Current charge control compliance procedures

2.3.1 Procedures employed by Ofcom

In the UK, there are currently different compliance requirements for different types of operators and, in some cases, for different products supplied by the same operator. For example:

- The calls to mobile charge control conditions require MNOs to supply, on an annual basis, spreadsheets that represent unaudited financial information. These are used by Ofcom to

⁴ See ISA (UK and Ireland) 250 *Consideration of laws and regulations in an audit of financial statements* Section A

determine whether the charge control conditions have been complied with. There is no requirement to provide sources of information or evidence of the accuracy of the information being supplied; and

- BT submits, on an annual basis, audited regulated financial statements on a current cost accounting (CCA) and LRIC basis that detail the cost per product of all regulated products⁵. However, this information is primarily used to check that product prices are cost-orientated and is not currently used for compliance purposes. BT separately submits spreadsheets for compliance purposes, with data provided for each charge control.

There may be justifiable reasons for requiring different levels of compliance information from different operators and for different products. For example, BT's wholesale divisions – and in particular Openreach – are subject to a larger number of charge controls and cover a more complex product set than the MNOs. Another example could be where the product is low volume and low value (e.g. NTS retail uplift) and adding a large compliance burden would substantially increase the unit cost (and hence unit price) of a product to the extent that the benefits of additional compliance would not outweigh the additional costs. Furthermore, as Ofcom notes, compliance information required for “basket” controls that regulate the prices of a number of products and services is likely to be more complex than that required for a single year, single product charge. These controls are listed in Figure 2 below.

Figure 2: Basket charge controls

Charge control	Companies Covered	Date of review
Mobile termination rates	O2, Orange, T-mobile, Vodafone, H3G	March 2007
Network controls	BT Wholesale	September 2009
Partial Private Circuits (PPCs)	BT Wholesale	September 2008
Number translation services (NTS) uplift	BT Retail	September 2009
Wholesale line rental (WLR)	BT Openreach	To be reviewed
Local loop unbundling (LLU)	BT Openreach	To be reviewed

Source: Deloitte

Therefore, it is important that Ofcom considers the potential for consistent compliance processes between charge controls. However, any charge control compliance process should be set based upon the specific characteristics of the particular charge control to which it relates and therefore consistency between all charge controls may not be feasible.

2.3.2 Procedures employed by international telecommunication regulators

Given the lack of publicly available information, NRAs usually require regulated operators to submit data to show that they have complied with charge control regimes. It is usual for NRAs to determine the method of compliance and the particular information / forms that must be provided. However, our benchmark analysis indicates that the level of information requested and the degree of assurance

⁵ These regulatory reporting requirements have recently been refined following the BT Bluesky review

required over the accuracy of the data can vary widely between industries and between operators. Sometimes financial information is obtained from (audited) regulatory financial statements that are prepared on a FAC and/or LRIC basis and comply with the specific regulatory accounting methodology determined by the NRA.

FLOs are usually subject to numerous charge controls and as such are generally required to submit full regulatory accounts. The fixed operators' costing models and regulatory accounts are usually subject to independent audit. In some countries, such as Australia and France, auditors are chosen by the NRA. However in most jurisdictions, auditors are chosen and paid for by the operator. Charge control compliance information may not be drawn directly from these regulatory accounts in all cases. It is possible that, as is the case for BT, regulatory accounts may be used to check cost-orientation as opposed to actual compliance.

Compliance procedures for mobile operators also vary. In France and Italy, mobile operators are required to submit full regulatory accounts, subject to an independent audit. Auditors are selected and commissioned by the NRA and they are the same for all mobile operators. In Spain, compliance with roaming charges control is achieved by requiring the mobile operators to submit the results of the costing models, subject to an independent audit. Auditors are contracted by the operator and are usually the financial statement auditors of the operator.

In other countries, such as Sweden, Romania, Lithuania and Australia, there are no compliance requirements on mobile operators. In Sweden, compliance with the charge control is verified by the regulator by comparing the results of its LRIC model with the operators' price lists available on their website. In Romania, compliance is verified by the NRA by looking at the interconnection agreements between operators. Finally in Lithuania, operators are required to publish Reference Interconnect Offers, subject to transparency obligations.

The table below provides examples of the information and assurance that is required for charge control compliance by international telecommunication NRAs. Further case studies of the procedures adopted internationally are provided in annex 2 to this report.

Figure 3: Information and assurance level on compliance information requested by International Telecommunication NRAs

Regulator	Information Provided	Assurance Level
ARCEP (France)	Mobile operators submit full regulatory accounts on annual basis.	Regulatory accounts audited by Independent Auditors, nominated by the regulator (same auditors for all operators) The regulatory accounts and the audit report are not publicly available.
ANRC (Romania)	Fixed operator submit full regulatory accounts	Regulatory accounts audited by Independent Auditors. Independent Auditors provide a "fairly present" opinion.
CMT (Spain)	Mobile operators provide the regulator with the results of their	The results of the costing system are audited by an Independent Auditor

	cost accounting system.	contracted by the operator (usually, same as financial auditor)
AGCOM (Italy)	Mobile operators submit annually regulatory financial statements	Regulatory accounts audited by Independent Auditors, nominated by the regulator (same auditors for all operators)
ACCC - Australia	Incumbent fixed operator to submit a report providing full details of compliance with price cap requirements	The report has to be audited by an Independent Auditor appointed by the regulator.

Source: Deloitte

2.3.3 Procedures employed by UK NRAs

As part of our benchmark analysis, we have looked at compliance procedures currently in place in other UK regulated industries.

In the energy sector, Ofgem produces the Regulatory Instructions and Guidance (RIGs), which provide a detailed framework for the collection and provision of information from distribution service providers. Distribution Network Operators (DNOs) are required to submit actual and forecast revenue and associated information relating to demand, generation, metering, non-regulated services and de minimis revenues. The detailed return must be accompanied by an auditors' report and a letter from the auditors which sets out the audit procedures they have used to reach their opinion. The RIGs set out which sections of the data return must be audited. Assurance is currently based on "Agreed Upon Procedures"; as such, auditors do not express an opinion in their report (the International Standard on Related Services 4400, currently used by Ofgem as a basis for auditors reporting, explicitly states that auditors report should contain a "...statement that the procedures performed do not constitute either an audit or a review and, as such, no assurance is expressed;..."). However, auditors should state whether in their opinion: " (a) the information in relation to each of the items referred to in the statement has been properly prepared; and (b) the amounts presented are in accordance with the licensee's records which have been maintained in accordance with paragraph 2 of this condition."⁶

In the water industry, Ofwat requires all regulated operators to submit comprehensive annual reports ("June Returns") which are subject to independent scrutiny by Ofwat's "Reporters". The June Return contains detailed information on revenues, volumes and costs among other things. The reporting requirements are the same for each operator. Ofwat conducts an independent review of all the company returns it receives. Ofwat approves all appointments of the Reporters and sets out guidelines for the role. The Reporters report directly to Ofwat although they have a duty of care both to Ofwat and the regulated water companies. The Reporters act as professional commentators and certifiers on the regulated activities of individual water companies. The Reporters give Ofwat their professional opinion on the company process for developing its submission, and on the accuracy and reliability of the information. In particular, the Reporters Protocol states that, in their report, Reporters are required to address the following issues: compliance with guidelines, company assumptions,

⁶Condition 50, Part D of "Electricity Distribution License: Standard Conditions"

efficiency assumptions, assessment of company approach, areas of concern, differences of opinion and any other additional relevant information⁷.

In the postal sector, Royal Mail is required to submit estimates of its revenues and volumes from each tariff basket over the year as well as estimates of any increased costs that are permitted to be passed onto consumers, e.g. pension deficit costs. Postcomm requires that Royal Mail provides data on the prices charged for each of the regulated (controlled) services. These prices are the modal price for each service or, if more appropriate, another average price. Before being submitted to Postcomm the data must be reviewed by auditors and certified as being "fairly representative"; that is, "reasonably calculated, on the basis of professional financial and statistical analysis having due regard whenever possible to revenues invoiced by the Licensee by reference to stated prices and volumes and by reference to subcategories of the Controlled Services, where in the opinion of the Auditors, such reference is appropriate."⁸ If price data are not certified by Independent Auditors, Royal Mail must be able to provide Postcomm with sufficient data and details of methodology to provide assurance of how representative the data are. Independent Auditors are appointed by the licensee and must be independent and approved by Postcomm.

In the rail sector, Network Rail is required under its licence conditions to produce an annual return, which is reconciled to planned outputs, activities and expenditure where there is significant variance. This is audited by independent Reporters employed by the Office of Rail Regulation (ORR). The Reporter's report to the ORR is a comprehensive document which includes a Reporter's Audit Statement. In this section, the Reporter expresses his/her opinion on whether the Annual Return has been prepared "in accordance with [Network Rail] regulatory and statutory obligations using procedures prepared by Network Rail and agreed with the Office of Rail Regulation"⁹. The ORR also receives data every four weeks about the quality of the physical network and the impact on service. Independent Auditors verify the accuracy and reliability of data and systems. The ORR currently has three auditors in place which look at different aspect of Network Rail's activities.

Finally, in the aviation industry, airports are required to submit revenue and volume data which must be independently audited and signed off by two board directors. The airports are able to choose their own auditor and the Civil Aviation Authority (CAA) does not set out guidelines for the auditor. The Independent Auditor's statement contains its opinion on the way in which figures are produced and that they are properly extracted and is subject to various disclaimers¹⁰. These regulatory accounts are not publicly available. The Independent Auditors only have a duty of care to the airports.

The following table summarises the information and assurance that is required for charge control compliance by UK NRAs. Further information is provided in annex A.

⁷ Reporters to Ofwat – Reporters Protocol, Issue 2, 2003

⁸ As set out in Royal Mail's licence

⁹ Independent Reporter A. Annual Return 2006. Final Report. Written by Halcrow Group Limited

¹⁰ Information provided based on discussions between Deloitte and the CAA

Figure 4: Information provided and assurance level on compliance information: UK NRAs

Regulator	Information Provided	Assurance Level
Ofgem	Annual Return submitted by the regulated entities, containing information about actual and forecast revenue and associated information relating to demand, generation, metering, non-regulated services and de minimis revenues.	Annual Returns are audited by Independent Auditors on the basis of Agreed Upon Procedures. As such, Independent Auditors do not express an assurance opinion. Neither the data nor the Independent Auditor's report are published.
Ofwat	Regulated operators submit annual reports ("June Returns") containing detailed information on revenues, costs and volumes.	The June Returns are subject to the review of independent "Reporters", appointed by the regulator. The Reporter gives Ofwat his/her professional opinion on the company process for developing its submission, and on the accuracy and reliability of the information. The Public Domain version of the June Returns are available on the Ofwat website.
PostComm	Royal Mail is required to submit estimates of its revenues and volumes from each tariff basket over the year as well as estimates of any increased costs that are permitted to be passed on.	Before being submitted to Postcomm the data must be reviewed by Independent Auditors and certified as being "fairly representative". Auditors are appointed by the licensee and must be independent and approved by Postcomm.
ORR	Network Rail is required under its licence conditions to produce an annual return containing data on actual outputs, activity and expenditure.	The annual returns are audited by independent Reporters employed by the Office of Rail Regulation (ORR) on an "in accordance with" basis. The annual returns are a public document and can be found on Network Rail website. The Reporters report is also publicly available from the ORR website.
CAA	Airports are required to submit revenue and volume data.	Data submitted must be independently audited and signed off by two board directors. The airports are able to choose their own Independent Auditor. The auditor's statement contains its opinion on the way which figures are produced.

Source: Deloitte

2.4 Ofcom Powers to Amend Charge Control Procedures

Ofcom has guided Deloitte not to be bound by current regulatory powers when considering the set of potential compliance options and that it intends to ensure that it has sufficient legal powers to require the implementation of any compliance option that it seeks to proceed with. We provide a brief review of the powers under which Ofcom could seek to acquire any additional compliance information.

2.4.1 Regulatory Powers, established through the consultation process

Ofcom may seek to draft a set of new regulations which apply specifically to charge control compliance. These are likely to be drafted separately for each specific charge control and will be explicitly linked to the final charge control statements. For example, Ofcom may draft regulations that apply to compliance with Annex 20 of the Final Statement of Mobile Call Termination (March 2007). Before implementing such regulations, Ofcom has informed us that it would undertake a public consultation process.

Ofcom (and Oftel previously) implemented specific regulation for BT charge control compliance following a public consultation process. For example, BT is currently subject to a number of Charge Controls including NCC's and within the regulation surrounding each of these. BT is required to provide compliance information.

2.4.2 S135 Powers

Should Ofcom not wish to pursue a full regulation consultation process, then it could request information on an *ad hoc* basis under its S135 Powers.

S135 powers are legislated in the Communications Act 2003 and apply to all communications operators in the UK. They allow Ofcom to require specific persons and firms (as noted within the Act) to provide them with all information as they consider necessary for the purposes of carrying out their statutory duties as laid out in the Communications Act, e.g. for investigations. The instances for which information may be required are defined widely and include:

- Ascertaining whether a contravention of a condition or other requirement set or imposed by the Communications Act has occurred or is occurring;
- Ascertaining or verifying the charges payable by a person under section 38¹¹;
- Ascertaining whether a provision of a condition set under Section 45 which is for the time being in force continues to be effective for the purpose for which it was made¹²;
- Ascertaining or verifying amounts payable by virtue of a condition falling within Section 51(1)(d)¹³;
- Making a designation in accordance with regulations made under Section 66¹⁴;

¹¹ Section 38 of the Act refers to "Administrative charges imposed on providers – fixing of charges".

¹² Section 45 of the Act refers to "Conditions of entitlement to provide network or service etc. – power of Ofcom to set conditions"

¹³ Section 51(1)(d) refers to general "conditions for giving effect to determinations or regulations made under Section 71." Section 71 refers to "Sharing the burden of universal service obligations"

- Carrying out a review under Section 66 or 70¹⁵;
- Identifying markets and carrying out market analyses in accordance with, or for the purposes of, any provision of this Chapter;
- Ascertaining whether a question has arisen that gives rise to their duty under Section 105¹⁶;
- Considering a matter in exercise of that duty; and
- Statistical purposes connected with the carrying out of any of Ofcom's functions under this Chapter.

A cursory review of this Act may suggest that Ofcom could require operators to provide information that would allow Ofcom to undertake its statutory duty of imposing (necessary) charge controls and subsequently ensuring compliance. However the Communications Act does not provide specific guidance on the form of the information to be requested or whether this relates to a single request or could be applied over multiple years. Therefore, should Ofcom determine that information could be obtained under S135 then it would still need to determine the type of information to be obtained and the degree of assurance required.

Moreover, S135 powers were designed to allow Ofcom to collect data as and when it is needed and not necessarily to request data on an annual basis. Based upon our discussion with Ofcom we understand these powers may not enable Ofcom to collect data from operators on a consistent annual basis from year and therefore additional regulatory powers may need to be drafted.

¹⁴ Section 66 of the Act refers to “Designation of universal service providers”

¹⁵ Section 70 refers to “Review of compliance costs”

¹⁶ Section 105 of the Act refers to “Ofcom’s duty to intervene on network access issues – Consideration and determination of network access questions”

3 Range of Potential Options for Ofcom

In this section we set out the range of options that Ofcom is considering to ensure that operators are compliant with their charge control obligations. The spectrum of potential options ranges from no active checks through to requiring a full regulatory audit and reconciliation between charge control data and the regulatory accounts. As requested by Ofcom, we seek to set out the full spectrum of options in this report.

The range of options for monitoring compliance with price cap regulation consists of two main elements:

1. The level of information provided by operators; and
2. The degree of assurance over the accuracy of the data provided.

Each option relating to the level of information option can be combined with each of the assurance levels to provide a full set of compliance options.

These monitoring options imply varying levels of responsibilities and involvement for both Ofcom and operators. In particular, where no active checks are carried out there is relatively little burden on either Ofcom or the operators. Where data submissions are required this requires the involvement of the operators and, to varying degrees, the involvement of Ofcom in verifying the data. Most of these options would require Ofcom to determine itself whether or not an operator has complied with its charge control.

Based on our review of compliance procedures that are implemented by UK NRAs with price caps in place and by telecommunications NRAs internationally, we assessed the range of possible compliance options that Ofcom could adopt although clearly there is still scope within these options for variations to be made. Figure 5 summarises the range of options for the information provided by operators. Figure 6 summarises the range of options for assurance over the accuracy of the data submitted. The relative pros and cons of each of these options are discussed in Section 4.

Figure 5: Information provided by operators

Option	Description
Full regulatory accounts	<p>Includes profit and loss account, balance sheet or statement of mean capital employed, detailed segmental analysis of operations, costs and income.</p> <p>Reconciles between the total revenue, total costs and net assets reported within the regulatory accounts and those reported within the statutory financial statements. These are usually disaggregated into regulated and non-regulated services with regulated services further sub-divided into separate services.</p> <p>Ofcom can request that operators provide volumes data so that it is possible to calculate unit prices.</p> <p>Ofcom can specify the way in which costs should be presented (on current cost or historical cost basis) and calculated (incremental, fully allocated, etc.). Ofcom may need to publish detailed principles and instructions on the way in which data should be prepared and presented.</p> <p>Operator would need to prepare a manual setting out the methodology it has used in order to show compliance with Ofcom's reporting requirements.</p> <p>Operators may be required to publish these regulatory accounts and assurance statements relating to these.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Incumbent fixed line operators, including BT, are usually required to provide this level of information. Often these accounts are published, along with any assurance statements. • Water companies in the UK prepare regulatory accounts on a CCA basis as set out in Ofwat's RAGs. These accounts are published. • The three French MNOs are required to prepare regulatory accounts subject to the NRA's guidelines. These accounts are published. • Italian mobile operators are required to submit annually regulatory financial statements detailing the costs of each regulated product.
Reduced regulatory accounts	<p>Less onerous than full regulatory accounts since less information required.</p> <p>Contains information on costs, volumes and revenues that are aggregated into an income statement. Could potentially include, for example, only an income account and not a regulatory balance sheet. Does not have to include the same level of detail for every regulated service and could, for example, include only details for regulated services or a particular subset of regulated services.</p> <p>However, Ofcom would need to set out the principles and bases upon which the accounts should be prepared in RAGs.</p> <p>Reconciles with statutory financial statements.</p> <p>Operator would need to prepare a manual setting out the methodology it has used in order to show compliance with Ofcom's reporting requirements.</p> <p>Operator's may be required to publish these regulatory accounts and assurance statements relating to these.</p> <p>Example:</p> <ul style="list-style-type: none"> • The BT Bluesky project recently reduced BT's reporting requirements. BT will continue to be required to make regulatory reports publicly available.

Detailed data submission	<p>Data relating to volumes and revenues disaggregated by service so that it is possible to calculate an average price for each regulated service. Ofcom may wish to request volume and revenue data to be split by time of day and week and/or by customer category if appropriate.</p> <p>Ofcom could also request cost data although this may not be strictly necessary to monitor the operator's compliance.</p> <p>Ofcom can specify the format in which data must be submitted e.g. spreadsheet; the basis on which data should be presented e.g. current or historical costs, absolute or relative values; and the level of accuracy required e.g. to the nearest thousand, hundred, decimal place. These requirements would form part of the RAGs.</p> <p>This may be subject to Ofcom specifications on the way in which data must be collected and processed and Ofcom would need to prepare and publish guidance and instructions for the operators and, potentially, their Independent Auditors.</p> <p>Operator required to provide details of the way in which data are collected and processed as well as any internal cross-checks to ensure the data are representative, e.g. between the billing system and switch data or an analysis by an independent engineer to check the consistency of the data provided to Ofcom for other purposes.</p> <p>Operator's may be required to publish this data submission, or a less-commercially sensitive version.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Electricity distribution network operators in the UK. This information is not publicly available. • BAA is required to submit revenue and volume data on its airport charges to the CAA in the UK but this information is not publicly available.
Short data submission	<p>Data relating to volumes and revenues disaggregated to some extent between different service categories.</p> <p>This may be subject to Ofcom specifications on the way in which data must be collected and processed.</p> <p>Operators would need to interpret Ofcom's RAGs and instructions and document the way in which the data are collected and processed. If an Independent Auditor's opinion were required, the Independent Auditor would also need to develop its own interpretation.</p> <p>Similar to a detailed data submission but the data submission itself would not contain the methodology adopted by the operator to collect and prepare the data. Nevertheless, this methodology may still need to be submitted and reviewed by an Independent Auditor if an Independent Auditor's opinion is required.</p> <p>Depending on the amount of data provided it may or may not be possible to calculate an average price for each regulated service.</p> <p>Operator's may be required to publish this data submission, or a less-commercially sensitive version.</p> <p>Example:</p> <ul style="list-style-type: none"> • BT in the UK are currently required to provide a short data submission on NCC's which are not subject to independent audit.

No data requested	<p>Operators do not submit any data and Ofcom either relies on operators to comply or to rely on publicly available data.</p> <p>Examples:</p> <ul style="list-style-type: none"> • The Swedish telecommunication NRA (PTS) does not request any data from the regulated fixed and mobile operators but instead checks compliance by looking the prices published on the operators' websites. • In the UK, Openreach's prices for various LLU and WLR services are subject to charge ceilings. Openreach is required to publish its prices, ensuring they are transparent to other Wholesale operators and negating the need for active compliance monitoring
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Figure 6: Degree of assurance

Option	Description
Independent audit of compliance with the price cap regulation	Following an independent audit of the processes adopted by the operator in deriving the data and the calculation of the price, an Independent Auditor provides a publishable opinion on whether the operator has complied with the price cap regulation.
Independent audit with "true and fair" statement	<p>Independent Auditors give an unqualified, publishable, opinion that the accounts present a "true and fair" view, in accordance with the relevant accounting standards, of the company's state of affairs and have been properly prepared in accordance with The Companies Act 1985.</p> <p>Not applicable for regulatory purposes where the level of assurance and form of opinion is set by the regulator rather than defined in The Companies Act. The concept of true and fair encompasses compliance with accounting standards and disclosure requirements which are inevitably more extensive than required in regulatory returns.</p>
Independent audit of regulatory accounts	<p>Ofcom sets out the regulatory accounting guidelines (RAGs).</p> <p>The Independent Auditors are engaged in one of the following ways:</p> <ul style="list-style-type: none"> • Tri-partite engagement contract which is applied to both the NRA and the operator, with an acknowledgement of a duty of care by the Independent Auditors to both the operator and the NRA. • Bi-partite engagement contract where the regulator has agreed to sign a written notice, and a bi-partite engagement contract signed by the operator, thereby having an acknowledgement of a duty of care by the Independent Auditors to the operator and an agreement to extend the duty of care to the NRA provided that it agrees appropriate terms with the Independent Auditors in the written notice. • Bi-partite engagement contract with the operator which will expressly deny any duty of care to the NRA. • Bi-partite engagement contract with the NRA, with the duty of care being expressly only to the regulator or where the operator agrees to sign a written notice so that the duty of care also extends to the operator. <p>In the utilities sectors, it is most common to adopt the second option, whereby a</p>

Option	Description
	<p>contract exists between the operator and the Independent Auditors, and the duty of care is extended to the Regulator by means of a written notice.</p> <p>Regulatory audits are carried out in accordance with International Standards of Auditing.</p> <p>The testing performed is based on a level of materiality calculated in accordance with professional standards, and based on the regulated activities of the operator.</p> <p>Independent Auditors give an opinion as to whether the regulatory accounts have been “properly prepared” and “fairly present” the regulatory financial performance of the operator in accordance with Ofcom RAGs.</p> <p>A “fairly present” opinion is appropriate for regulatory accounts as it is on the operator’s overall financial position and performance, and indicates if there exists sufficient disclosure and reasonable detail to interpret the accounts, and an absence of bias.</p> <p>This opinion may be publishable alongside the published regulatory accounts.</p> <p>This approach is consistent with The Institute of Chartered Accountants in England and Wales Technical Release Audit 05/03 - <i>Reporting to Regulators of Regulated Entities</i> (“AUDIT 05/03”).</p>
Independent audit of data submissions (SAS 700)	<p>Ofcom sets out the data/analysis required, the way in which such data should be collated and presented (RAGs).</p> <p>The Independent Auditors may be engaged under any of the 4 methods set out under the full audit of regulatory accounts.</p> <p>As discussed above, a “fairly present” opinion is appropriate for a set of regulatory accounts. However this is not appropriate for a data submission as the opinion would only be on the mechanical extraction and calculation of certain key data from the operator’s systems (as specified by Ofcom’s guidelines), and not on the overall financial position and performance of the operator.</p> <p>Given this, the Independent Auditors would give an opinion as to whether the data submission has been “properly prepared in accordance with” Ofcom’s guidelines/requirements.</p> <p>The Independent Auditor’s opinion would be publishable alongside the data submissions. Where the data submission is not published, then it would be inappropriate to publish an opinion about the data. However, Ofcom may require the operators to publish a statement on whether the Independent Auditors provided an unqualified report or any qualifications were made.</p> <p>It may be possible for a less commercially sensitive data submission to be published and the audit opinion to be published alongside this more limited dataset.</p> <p>AUDIT 05/03 referred to above explains how SAS 600 Auditor’s Reports can be applied to the audit of regulatory accounts. SAS 600 was replaced for periods commencing on or after 15 December 2004 by ISA (UK and Ireland) 700 <i>The auditor’s report on financial statements</i>. SAS 700 refers, in paragraph 1, to “[m]uch of the guidance provided can be adapted to auditor reports on financial information other than financial statements” and would be applicable in this circumstance.</p>

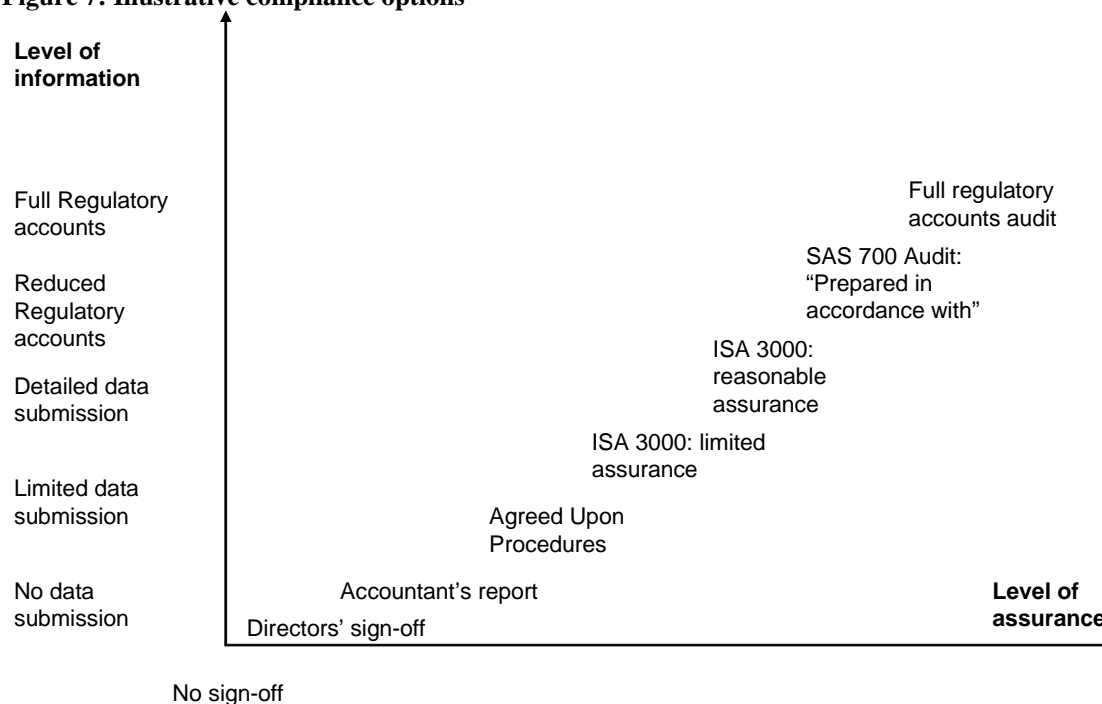
Option	Description
ISA 3000	<p>The Independent Auditors undertake a review of the data based upon the International Standard on Assurance Engagements 3000: <i>Assurance engagements other than audits or reviews of historical financial information</i> ("ISAE 3000").</p> <p>ISAE 3000 is an assurance standard which sets out how an auditor might perform an engagement to give assurance. There are two levels of assurance engagement possible:</p> <ul style="list-style-type: none"> ➤ a "reasonable" assurance engagement wherein the auditor carries out procedures on a subject matter and expresses a positive, but not absolute, conclusion (for instance, "in our opinion X is, in all material respects, the case") which involves the auditor understanding the subject matter, considering whether there are suitable criteria against which to assess it, selecting and performing appropriate tests of systems and raw data and concluding. This level of assurance is akin to that delivered by an audit of financial statements; and ➤ A "limited" assurance engagement wherein the auditor's procedures are, as the name implies, more limited - largely enquiries and analytical procedures with little or no testing of the operation of controls or raw data leading to a negative conclusion (for instance, "based on my work I am not aware of anything which indicates that X is not the case"). <p>In both cases appropriate criteria are needed to assess the subject matter which should be complete, relevant, reliable, neutral and understandable. Bearing in mind these criteria, the auditor plans tests sufficient to obtain the level of assurance which they report in their conclusion.</p> <p>This is by contrast to agreed-upon procedures where the auditor simply performs tests agreed with their client and/or the user of the report and expresses no conclusion. This means that the user is responsible for drawing their own conclusion.</p> <p>Although ISAE 3000 has been effective since 1 January 2005 as yet IAASB has not developed any of the envisaged more specific standards for applying the standard to specific subject matters (existing ISAE 3400 is an older standard that needs revising to be consistent with ISAE 3000). The UK APB has used ISAE 3000 as the basis of the recently issued Statements of Investment Reporting standards but none of these are directly relevant to Ofcom's needs. Accordingly, if they wish to use ISAE 3000, Ofcom will need to work closely with the regulated entities to:</p> <ul style="list-style-type: none"> ➤ develop suitable criteria to assess the subject matter which meet the requirements of the assurance framework; and ➤ Set a level of materiality appropriate to the engagement in question. <p>The form of the Independent Auditor's report is not specified in ISAE 3000 and will vary depending upon whether it is a reasonable assurance or a limited assurance engagement. For the purposes of this document a reasonable assurance level is assumed to be applied.</p> <p>Ofcom may require the Independent Auditor's report to be published. However, this would also require the underlying data on which the report was written to be published. Alternatively, Ofcom may require the operators to issue a statement on whether the audit report was unqualified.</p>

Option	Description
Agreed upon procedures	<p>Ofcom requires specific factors to be reported upon by the Independent Auditors. The Independent Auditors agree a list of procedures (“Agreed Upon Procedures”) that they will perform for Ofcom, which are specified within the engagement contract with Ofcom. There is no UK standard for agreed upon procedures. However, firms would normally apply the International Standard on Related Services 4400 which is the international standard and which is consistent with extant ICAEW guidance on reporting to third parties. The UK APB has not indicated when and if it might adopt ISRS 4400 for use in the UK and Ireland.</p> <p>The findings of the procedures are reported by way of a factual report to Ofcom. The Independent Auditors do not express an opinion on the results of the Agreed Upon Procedures nor the appropriateness of these procedures for the purposes of Ofcom.</p> <p>Ofcom may require the Independent Auditor’s report to be published. However, this would also require the underlying data on which the report was written to be published. Alternatively, Ofcom may require the operators to issue a statement on whether the audit report was unqualified.</p>
Review by the Regulator	<p>Ofcom will conduct its own review of the operator’s data submission.</p> <p>Ofcom will perform procedures it deems necessary to gain sufficient assurance on the data submission and this could potentially include visits to the operators’ premises or working on site.</p> <p>The review could include assessing the basis of the data derivation and reconciling them to the underlying accounting records or systems.</p> <p>Ofcom may choose to publish the details of its review.</p>
Accountants’ report	<p>The Independent Auditors confirm that they have assisted in the preparation of the data from the accounting records or systems, but do not provide any statement assuring the accuracy of the data. Ofcom may require this to be published.</p> <p>This is similar to the approach adopted by firms in the UK that are not required to provide statutory accounts. Where a company is below certain financial thresholds, as set out in relevant company legislation, and not otherwise captured by rules governing audit requirements, it is exempt from the obligation to undergo an annual audit of its financial statements. Where it employs an accounting firm to prepare its financial statements those may be accompanied by an Accountant’s Report where the focus is on compilation and no audit is conducted.</p>
Director sign off	<p>Operator’s Directors/Board of Directors provide written confirmation on the correct extraction and accuracy of the data submitted to Ofcom. Ofcom may choose to publish this written confirmation.</p> <p>There are not usually any sanctions over and above those already in place for non-compliance with the regulations connected with the nature of the return provided. However, it is arguable that there is an inherent increase in self-imposed assurance in that the Operator’s return is subject to the additional internal control and scrutiny that is normally required before a Board or an individual Director approves a document.</p> <p>Ofcom may choose to combine Director-sign off with any of the other assurance</p>

Option	Description
	options listed in this table.
Operator provides a reconciliation and details of data sources	The Operator is required to provide details of the method in which the data were gathered/extracted and processed, and provide a reconciliation of the data to underlying accounting records or systems. These are unaudited. Ofcom may choose to publish the full methodology submission, or, to respect commercially sensitive information, an overview of the methodology.
No reconciliation required	Ofcom relies on the operator to provide representative information.

In the following section we provide an evaluation of each of these options relating to the level of information provided by Operators and the level of assurance about the accuracy of the data given to Ofcom. The following figure provides an illustration of the combinations of level of information and assurance that are available to Ofcom and compares these to the current compliance requirements.

Figure 7: Illustrative compliance options



Source: Deloitte

Currently, MNOs are required to submit data on revenues and volumes, which are not subject to any audit or sign-off obligations. BT is required to produce annual full regulatory accounts, which are signed off by the Head of Regulatory Affairs (not a Director). However, these regulatory accounts are not used for charge control compliance purposes.

4 Assessment of Each Compliance Option

Ofcom's objective is to ensure that the data submitted by Operators to demonstrate their compliance with charge controls can be verified. A secondary objective is to make the data more useful in current and future regulatory decision making. In addition, Ofcom requires that the reporting obligations will remain relevant and appropriate as the market develops, new technologies such as next generation networks (NGNs) are rolled out and the communications market increasingly converges.

Collecting a great deal of independently audited information can increase the certainty with which regulators can determine compliance. However, such requirements create a burden on Operators to collect data and on NRAs to ensure proper guidelines for the collection and audit of data are provided to operators. Ofcom has recognised this trade-off, and the potential need to develop an approach that provides effective and transparent guidelines for data submissions that provide a high degree of confidence in the volume and financial data while minimising, as far as possible, the costs incurred by Operators.

This section provides an overview of some key evaluation criteria for the different options and an assessment of each of the compliance options identified in Section 3 of this report. We also provide an initial estimate of the cost of each option, although such costs would be heavily determined by the nature of the exact requirements of Ofcom in any RAGs and should be regarded as preliminary and indicative at a high level.

4.1 Framework for Assessment

We review each of the options in Section 3 in terms of the criteria outlined in the figure below.

Figure 8: Assessment criteria

Key Factor	Issues
Cost	<ul style="list-style-type: none"> • The cost to Operators of preparing and submitting the data. • The cost to Ofcom of processing the data and verifying its accuracy. • External regulatory audit costs.
Assurance	<ul style="list-style-type: none"> • Sufficiency of data submitted for Ofcom to verify that Operators are complying with their price cap obligations. • Ability to reconcile data with verifiable sources e.g. interconnection billing systems, SAP / SAS. • The extent to which data are reconcilable with statutory accounts. • External opinion on data submitted. • Whether the opinion and / or the information provided can be published
Intrusion	<ul style="list-style-type: none"> • How much Operator data Ofcom itself actually sees. • How much additional data are required. • Whether the data requirement is proportionate to the regulatory outcome.
Regulatory Framework	<ul style="list-style-type: none"> • Ofcom's power to request the information. • The extent to which the proposal would require changes to the current regulatory reporting requirements. • Applications of the proposal to all charge controls, i.e. both fixed and mobile. • Applicability to future regulatory and market developments.

4.1.1 Costs to Operators

Adjusting the regulatory financial reporting procedures will affect the costs of compliance that are incurred by the mobile network operators and BT¹⁷. Currently, we estimate that the compliance costs to BT in absolute terms and as a percentage of revenues are likely to be considerably higher than those incurred by MNOs. This is mainly due to the larger range of regulated products which BT supplies. However, there is also an existing requirement for BT to supply audited regulatory accounts on a LRIC and CCA basis for each product. This may mean that the additional costs to BT for any new procedures could be significantly less than the costs of the existing procedures. In our assessment, we provide indicative costs of preparing the data and providing assurance.

¹⁷ We have assumed in this proposal that the regulatory financial reporting procedures applied within the media industry, e.g. to Sky will not be effected by this consultation process and it will apply only to telecommunication operators. However, this methodology could be expanded to include advice on recommendations for media related reporting requirements and we can, additionally, draw upon regulatory economists and auditors who have specific expertise within the media sector.

4.1.2 Degree of assurance

Ofcom has indicated that its main objective is to increase assurance levels associated with the charge control compliance data that are provided by the MNOs. However, when evaluating optimal assurance levels, it is important to consider the trade-off between the degree of assurance available to Ofcom and the costs to the operators of preparing, validating and auditing the information. Generally, there is a positive correlation between the level of assurance and the cost of compliance.

Ofcom has also stated that it wishes to assess the extent to which the information provided and / or the assurance opinion may be published.

4.1.3 Intrusion

Ofcom has indicated that it wishes to consider the degree of intrusion into MNOs from any change to compliance requirements. MNOs may be uncomfortable with the prospect of Ofcom undertaking active checks on its information or obtaining data from source systems. MNOs may also have concerns about the extent of publication of information provided to Ofcom and / or the assurance opinion. This is because it may put commercially sensitive information in the public domain.

4.1.4 Regulatory framework

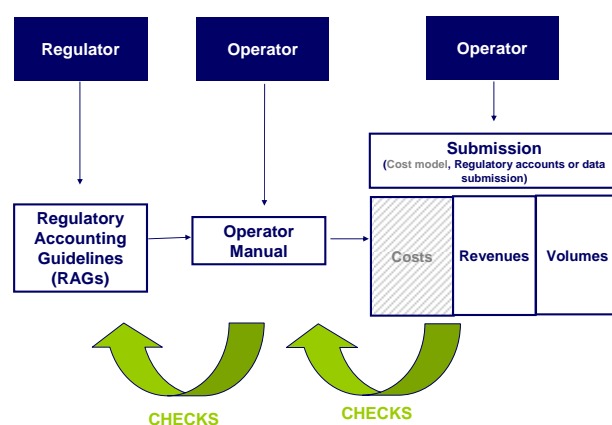
We also evaluate each of the options based upon the general appropriateness of the option for obtaining compliance information within the regulatory framework, as defined under the Communications Act 2003. We consider whether additional regulation would require drafting and the extent to which the compliance option would be applicable to the current range of charge controls and to charge controls that may be implemented in the future.

4.2 Assessment of Options for Level of Information

In this section we discuss some of the key considerations associated with each of the options identified in Figure 5 and the advantages and limitations associated with these.

Independently from the type of submission required from operators (full regulatory accounts, reduced regulatory accounts or just a data submission), the process for the preparation and audit of the submission would be broadly consistent across the different options. Figure 9 below provides a graphical illustration of the way in which Operators would prepare their data submissions.

Figure 9: Process for data submissions



Source: Deloitte

As the previous figure shows, Ofcom would prepare RAGs (sometimes called “regulatory instructions and guidance” or “RIGs” or “principles and bases”) in which it would set out the principles and rules according to which the submission data should be prepared. The level of detail in the RAGs would be at the discretion of the regulator. In establishing RAGs purely for charge control compliance purposes then Ofcom may, for example, stipulate that operators provide information on volumes and revenues but not costs. However, up to a point, the greater the level of detail, the more Ofcom would be able to ensure consistency between the data submissions of each operator. Each operator would then prepare a manual, in which it sets out the procedures used to prepare the data submission, in accordance with the RAGs. This manual can be expected to be consistent between years, unless the underlying guidelines are modified. However, it is likely that the manuals will differ considerably between operators, reflecting the different operating systems and data recording procedures currently used by the MNOs. Finally, the operators would prepare the data to be submitted, following the procedures stated in their manual. Any audit of the submission data would then consist of two steps. Firstly, the operator’s manual would be checked to be consistent with the RAGs. Secondly, it would be verified that the data to be submitted have been prepared using the procedures described in the manual.

4.2.1 Full Regulatory Accounts

BT is currently required to prepare full regulatory accounts which include cost, revenue and volume information for each of its regulated services. However, the preparation of full regulatory accounts can be a resource intensive and intrusive requirement for an operator and this may be disproportionate if only a small subset of the operator’s services is regulated. Fixed operators worldwide are generally required to submit full regulatory accounts. Full regulatory accounts are required from mobile operators in a number of countries, including France and Italy even though a smaller subset of their activities is subject to charge controls. However, the cost information submitted by mobile operators in these countries is used by Regulators to inform charge setting.

Some of the key advantages and limitations of this approach are outlined below.

Key considerations

- Whether regulatory accounts should be prepared on a CCA, FAC or LRIC basis.
- The extent to which costs, revenues and volumes need to be disaggregated by different regulated service categories.
- What level of detail Ofcom should include in the RAGs in order to ensure that the regulatory accounts remain relevant and to ensure that they are applicable to all operators.
- How much information should be provided to Ofcom and should this also be made publicly available?
- The extent to which the information contained in the regulatory accounts is suitable for charge control compliance. For example, BT provides regulatory accounts but they are not sufficient for Ofcom to assess compliance.

Advantages

- Would provide Ofcom with revenue and volume information disaggregated by various service categories and this would allow Ofcom to determine whether an operator has complied with its charge control requirements.
- Easier to reconcile revenue and cost data with statutory accounts. It is not possible to reconcile volumes since this level of detail is never required to statutory accounts. This limits the value of reconciling regulatory accounts with statutory accounts for the purpose of ensuring that an operator is complying with its charge control obligations.
- Represents the maximum level of information that Ofcom could request¹⁸.
- Creates a single source of information for each operator which could be used by Ofcom for other regulatory purposes, e.g. as a cross-check for the setting of mobile termination rates.
- If accounts are made public, then may help to inform potential entrants' "make or buy" decisions, for example whether a potential entrant enters the market as a mobile virtual network operator or as a network operator in a given region.
- May be viewed by consumer citizens as the best way of ensuring compliance.

Limitations

- Burdensome requirement on operators since this level of information and preparation of data is unlikely to be used for other regulatory obligations or internal procedures. The preparation of full regulatory accounts is a demanding process since it requires operators to separate their costs and revenues between regulated and non-regulated services. Furthermore, the burden may be disproportionate if only a small subset of the operator's services is subject to regulation.
- May be unnecessarily intrusive since it requires detailed cost information which is not needed to determine whether or not an operator is complying with its charge control. Such information may potentially be used by the operator's competitors if made public.

¹⁸ A change in regulatory powers may be required if Ofcom wanted to ask for more information

- Requires Ofcom to set out clear guidelines on how regulatory accounts should be prepared in order to ensure consistency across mobile and fixed operators. Generally, specifying more detailed RAGs can result in greater consistency in reporting between operators since there is lower scope for differences in interpretation. However, it may not be possible for there to be full consistency if the internal billing or other systems vary significantly between the operators. This issue is less relevant for the fixed market where only BT is required to submit full regulatory accounts.
- Unlikely to be feasible under Ofcom's S135 powers since it would not be easy to collect data consistently from year to year. This could create uncertainty for operators which could be costly. As such, this proposal would likely need to be consulted on as an accounting separation exercise in order to become part of the operators' charge control conditions.

Cost Estimate

This is the cost relating to the effort of developing the regulatory submission. Auditing and other assurance costs are reported separately in section 4.3.

For an MNO who does not currently prepare regulatory accounts:

- Approximately £500,000 - £700,000 for external consultancy fees to develop an operational cost model and model manual and purchase of software. In addition the MNO may incur the cost of 4-5 full time employees (FTEs) for one year;
- Ongoing costs of around 3 FTEs to maintain and update the model. In addition operational employees from across the business will be required to support the ongoing data collection process; and
- Operator may also need to make changes to the output sets of existing financial system (such as SAP) and operating systems (such as its network management system, (NMS)) to ensure that they generate sufficient information for regulatory accounting purposes.

For a fixed line operator:

- BT estimates that the costs of its regulatory accounting obligations are £7m annually, of which £1.4m is the regulatory audit fee¹⁹; and
- For an operator who currently prepares regulatory accounts, there may be additional expenditure related to further product disaggregation or the inclusion of additional information (e.g. volumes). For example, this could require cost drivers to be updated to reflect the new product set. However volume information should currently be collected to derive routing factors and for charge control compliance. Therefore, the operator may incur a relatively low additional compliance cost.

4.2.2 Reduced Regulatory Accounts

While reduced regulatory accounts would be less intrusive than full regulatory accounts, they can still be both burdensome and intrusive. We provide an assessment of this option below.

¹⁹ Sections A5.4 and A5.1 of Regulatory financial reporting obligations on BT. Taking a fresh view, Ofcom Consultation, May 2006. Available at: http://www.ofcom.org.uk/consult/condocs/reg_bt/reg_bt_consult.pdf

Key considerations:

- The frequency with which reduced regulatory accounts should be submitted.
- Whether all regulated services should be explicitly listed or only a relevant subset of services.
- Whether Ofcom requires cost information and, if it does, the extent to which it should be disaggregated, the number of cost drivers and, where LRIC is required, cost volume relationships (CVRs) that should be included.
- The level of guidance Ofcom wishes to provide for the collection and preparation of data.

Advantages

- Less burdensome than full regulatory accounts but can still present the level of information required by Ofcom to ensure that the operator is complying with the regulation.
- If accounts are made public, then may help to inform potential entrants' "make or buy" decisions, for example whether a potential entrant enters the market as a mobile virtual network operator or as a network operator in a given region.
- Allows operators and Ofcom to focus attention on the information and services that are most relevant to ensure compliance with charge controls.
- Less intrusive than full regulatory accounts since operators do not necessarily have to provide cost information broken down by different service categories.

Limitations

- Still relatively costly on operators since it requires them to allocate their costs and revenues between its different activities. This burden is proportionately greater for mobile operators than for BT given that mobile operators only face price regulation for one of their services whereas BT faces price regulation for a number of its services. The level of burden would depend on how detailed the reduced regulatory accounts are required by Ofcom to be.
- Requires Ofcom to set out clear RAGs on how accounts should be prepared in order to ensure consistency across operators and between years. If RAGs are not detailed enough, they may be open to interpretation by operators. This could create scope for misrepresentation of information or for inconsistencies in data reported between operators.
- Difficult to ensure applicability with any future compliance requirements since, unless the RAGs were less specific, it would be difficult to add services that become regulated. However, reducing the detail in the RAGs increases the scope for interpretation and therefore the potential for inconsistency between operators.

Cost estimate

- Likely to be less than the cost of developing full regulatory accounts. However, the cost depends largely on the level of information required and degree of cost and product disaggregation.

4.2.3 Short or Detailed Data Submission

Ofcom currently requires MNOs to provide short data submissions to show that they have complied with their charge controls. These are generally known as “flat files”. Short or detailed data submissions are less intrusive than regulatory accounts. Furthermore, they are likely to be less costly to produce since operators often have the relevant data readily available to them from their internal operational, interconnection and billing systems. For mobile operators, this approach is currently taken, for example, in Spain where operators are requested to submit the results of their cost accounting system.

We review some of the pros and cons of this option below.

Key considerations

- The level of disaggregation of revenue and volume data required to determine average prices of regulated services in order to determine compliance with the price cap.
- The level of information required to support the figures in the data submission. In other words, whether Ofcom requires information on the checks carried out by operators to ensure the data are representative. This could include a requirement that data from the billing system are cross-checked with switch data or that they are consistent with an independent engineer’s analysis.
- The extent to which operators should be required to show that the data reconcile with other data submitted to Ofcom.
- Whether the full data submission or partial data submission can be published.

Advantages

- Allows Ofcom to specify exactly what information it requires and how it wants it to be presented. This means that Ofcom can determine more easily whether or not an operator has complied.
- Guidelines can be set so that operators only need to submit relevant information. In the case of mobile operators, this may be volumes and revenue data that is sufficiently disaggregated to show separate 2G termination and 3G termination prices. This reduces the level of burden on operators as well as the level of intrusiveness.
- If the methodology for data extraction and data preparation is only provided to an Independent Auditor and not to Ofcom, this option could be less intrusive.
- Operators are likely to have the necessary level of information already available to them or it could be relatively easily calculated. For example the interconnection billing system, which operators use to charge each other, is likely to contain volumes and revenues broken down by different service categories. Volume data would also be captured by operators’ switches. As

well as providing revenue data, operators would also be able to submit data on how much they have paid to other operators and for what volume of minutes – although this may be subject to some rounding.

Limitations

- If RAGs are not properly set out, there may be a degree of inconsistency between the operators and between different submissions both in terms of the way in which data are collected and processed as well as presented.
- Ofcom RAGs are critical and need to be carefully prepared and they should not be too detailed since all operators are set up differently, i.e. different operators have different operational and billing systems.
- If guidelines are too restrictive they can limit the extent to which this approach is “future proof”, i.e. the extent to which it will be applicable if market or technological changes occur.
- It may not be appropriate for all charge controls if they are based on costs and well as revenues.
- It may not be appropriate to make data submissions publicly available as they may include commercially sensitive information. However, this means it may not be appropriate for any associated audit opinion to be published²⁰. Ofcom could consider publishing a partial data submission. Alternatively, Ofcom could require the operators to publish a statement that “the auditors issued an unqualified opinion” or “the auditor’s opinion was qualified in the following respect...” and then adding the text of the qualification”.

Cost estimate

This is the cost relating to the effort of developing the regulatory submission. Auditing and other assurance costs are reported separately in section 4.3.

- The cost is largely dependent on the level of detail required by Ofcom.
- The operator may incur a one-off implementation cost to produce a procedures manual that sets out the basis on which the submission is developed. This could be approximately £50,000 of external consultancy fees or 2 months of 2 FTEs.
- Should the ongoing level of information to be submitted be similar to that currently provided to Ofcom, then the incremental ongoing effort incurred is likely to be minimal.
- An increase in the ongoing level of information to be provided may result in a slight increase in cost relating to the preparation of a more detailed submission and, potentially, reconciliation back to source figures. However, it could be argued that the operators should already be undertaking such actions in support of the data currently provided. Also, any additional information may already be gathered for internal procedures such as business planning and interconnection billing.

²⁰ An audit opinion may be expressed on whether the data was prepared in accordance with the guidelines. However, unless the data is also publicly available, then publishing the audit opinion may only add limited value. Our case studies indicate that where data is kept confidential then any associated audit opinion is not published.

4.2.4 No Data Requested

The least intrusive and costly option would be to not require operators to submit any data at all. However, this would make it very difficult or impossible to ensure that operators were complying with their charge controls. This approach is currently in place in several countries including Sweden, Lithuania, Romania and Australia. In Lithuania, operators publish Reference Interconnect Offers. In Sweden, the regulator has developed a LRIC model and it then compares the results of the model with the operator's price list available on their website.

These advantages and limitations are discussed in more detail below.

Key considerations

- The level of assurance over whether operators comply with their price cap obligations.
- Whether there would be sufficient publicly available information in order to check whether operators are complying.

Advantages

- Places no burden on operators.
- Non-intrusive.
- Could place no burdens on Ofcom if it decides not to collect its own data.
- No need for reconciliation or assurance from the operator or an Independent Auditor.

Limitations

- Would not provide enough information to assess whether operators had complied or not since the level of information required by Ofcom to ensure compliance is not otherwise available to Ofcom from public sources.
- Ofcom would either have to trust operators to comply (operators have an incentive not to comply) or seek assurance from publicly available information. Publicly available information is unlikely to be sufficiently detailed or reliable to determine whether or not operators have complied.
- While many operators in the UK already produce cost and revenue information under financial reporting requirements and statutory audit purposes, these are unlikely to be appropriate for ensuring that operators have complied with price cap regulation.

This option to not collect any data from operators would imply no associated costs for operators.

4.3 Assessment of Options for the Degree of Assurance

In this section we discuss the advantages, limitations and incremental costs (if applicable) associated with each of the options identified in Figure 6 above.

4.3.1 Independent Audit and Auditor Statement About Compliance

It is unlikely that the MNOs would be able to obtain a statement of compliance from a reputable firm of Independent Auditors. Due to materiality considerations, a statement of compliance would require the Independent Auditor to test virtually every transaction on a transaction by transaction basis. It would also require a complete check of all operators systems (financial and operational). However, it would be highly difficult to check every system and value and to be certain that every possible event had been captured. Therefore, from a risk management perspective, an Independent Auditor is unlikely to be willing to provide a statement of compliance. Our benchmark analysis has not identified any examples of Independent Auditors issuing statements of compliance in either telecommunications or other regulated industries.

In the unlikely event this statement could be obtained, this would be highly expensive as since it would require the Independent Auditors to undertake intensive checks of systems and controls to ensure completeness. The cost is therefore likely to be disproportionate to the regulation.

Key Considerations

- To what would the statement of compliance be referring? For example, Annex 20 of the mobile call termination statement or a separate document to be issued by Ofcom.
- Increasing the level of materiality threshold could reduce the cost involved and potentially persuade Independent Auditors to issue an opinion. However, this would devalue the worth of the opinion as it would be based on less detailed work and it may still remain unlikely that an Independent Auditor would give an opinion given inherent difficulties in achieving assurance over completeness.

Advantages

- Would provide Ofcom with the highest level of assurance.
- Public opinion of compliance would be most easily understood by consumers.

Limitations

- Extremely unlikely that a reputable firm of Independent Auditors would undertake such work and give such an opinion.
- If a firm could be found to provide such an opinion, then the audit fee is likely to be extremely high since it would involve extensive checks and controls.

4.3.2 Independent Audit and statement of “true and fair”

Independent audits of statutory accounts are routinely undertaken. Under company law, statutory audits are required for companies that do not qualify as “small”. Independent Auditors provide an opinion based on a “true and fair” view; however a similar statement is unlikely to be suitable for regulatory submissions.

Limitations

- A “true and fair” opinion is applicable for statutory reporting purposes and is a requirement under company legislation (Companies Act 1985). Where conflicts arise between accounting standards and the Companies Act 85, a true and fair override over the accounting standards can be invoked. A similar override over the RAGs may be invoked and hence this is not deemed appropriate for regulatory purposes. As such, the MNOs are unlikely to be able to provide Ofcom with such a statement from a reputable firm of Independent Auditors.
- We have not identified any examples of regulators in the UK or overseas who require a “true and fair” opinion.

4.3.3 Independent Audit of Regulatory Accounts / Data Submissions

An independent audit can be performed on either the regulated accounts or on the data submission provided by the operator. The Independent Auditor will firstly check that the accounting manual or methodology statement that is produced by the operator conforms to the RAGs. Secondly, the Independent Auditor will check that the accounts or data submission has been prepared in accordance with the methodology.

Key Considerations

- What level of detail should be provided in the RAGs that Ofcom will provide to the operators? The guidelines must be sufficient such that the operators and Independent Auditors can follow them on a consistent basis. However, the rules must be able to be applied to operators who have different underlying systems and data collection processes. The procedures that Ofcom sets out will depend upon whether regulatory accounts or a data submission is required. However, in all cases, Ofcom should require the operator to provide a manual or methodology statement which sets out how it produced the numbers. The Independent Auditor will then check that this manual is consistent with the RAGs and that the accounts or data submission has been prepared as set out in the manual. In verifying the values in the accounts or data submission, typically, an Independent Auditor may be expected to:
 - Conduct an analytical review of results from one year to the next and explain any variances;
 - Undertake reasonability tests by checking whether the numbers “make sense” given market and operating conditions;
 - Check the data have been correctly extracted from source systems, for example if volumes were pulled from the switch then switching data would be requested to check that the data did originate from this source;
 - Undertake cross checks, for example by comparing volume data from the switch against volume data extracted from central operating systems; and
 - Depending upon materiality and the RAGs, the Independent Auditor could consider auditing the source systems.
- Ofcom will need to decide the extent to which required processes are explicitly set out in the RAGs as opposed to being left to the Independent Auditor’s best judgement. Explicitly setting

out the required processes in the RAGs would lead to lesser degree of interpretation and hence would achieve a higher level of consistency of the regulatory accounts/data submissions across the operators.

- How should the engagement contract with the Independent Auditors be structured?
 - Tri-partite engagement contract which is signed by both Ofcom and the operator, with an acknowledgement of a duty of care by the Independent Auditors to both the operator and Ofcom. The Independent Auditors are employed by both parties and both engage with the Independent Auditor and share, equally, all Independent Auditor reports;
 - Bi-partite engagement contract where Ofcom signs a written notice, and a bi-partite engagement contract signed by the operator such that the Independent Auditors have a duty of care to both the operator and Ofcom;
 - Bi-partite engagement contract with the operator which will expressly deny any duty of care to Ofcom; and
 - Bi-partite engagement contract with Ofcom which will expressly deny any duty of care to the operator.

There may be variations on the above four options. For example, we understand that Ofcom and BT refer to their engagement contract as tri-partite since both parties sign an engagement letter. However, the engagement letter signed by Ofcom is different to that signed by BT and the level of information received from the Independent Auditors also differs. So, in essence, this may be similar to a bi-partite agreement with written consent than a true tri-partite engagement contract.

A tri-partite agreement is rarely used in practice. It requires the operator and regulator to agree on an engagement letter and terms and conditions for the Independent Auditors and this can be difficult and untimely to agree. Also, the NRA may want to keep a distance from the operator and may not wish to co-sign a contract.

In the utilities sectors, it is most common to adopt the second option, whereby a contract exists between the operator and the Independent Auditors, and the duty of care is extended to the NRA by means of a written notice. This is the approach that is undertaken for BT's regulatory accounts. This ensures that the Independent Auditor must also consider the requirement of the NRA and that the NRA has the right to view the audit statement. However the management report, containing details of improvements the operator may wish to make, is only provided to the operator. In this way, the Independent Auditor is able to provide useful advice that the operator may act upon without disclosing this additional information to the NRA. Disclosure of the management report (under a tri-partite agreement) could result in the Independent Auditor's making less constructive comments to the operator.

The bi-partite agreement with the operator, with no duty of care to the regulator, ensures that there are no contractual arrangements between the NRA and the operators. It also places the burden of proof for demonstrating compliance with the operators. However, without a duty of care to the NRA, it could be perceived that the Independent Auditor was biased towards the needs of the operator.

Ofcom could also consider contracting with the Independent Auditor itself. This happens in France, where the energy regulator contracts a single audit firm to conduct the regulatory audit of all the energy companies. This is also the approach taken by the telecommunications regulators in France, Italy and Australia (for the fixed operator only). In Spain, data submitted by operators are subject to two audits. The Independent Auditors that conduct the first review are contracted by the operator, while the second auditors are appointed by the regulator (but are not necessarily the same for all operators). This ensures a consistent audit approach across companies, including approach to materiality. However, the operators could view this as being over intrusive. There are also issues over who ultimately pays for the audit. The NRA would pay the invoice and could either charge it back directly to the operators or require an increase in its (licence fee linked) funding. This would require adjustments to current regulatory powers.

- How should (consistent) materiality levels be set? The testing performed by the Independent Auditors is based on a level of materiality calculated in accordance with professional standards, and based on the regulated activities of the operator; that is, the level of materiality deemed to be appropriate is set by the individual Independent Auditor. However, the issue of ensuring consistent materiality has been considered by other regulators. For example, Ofgem explicitly states that it will consider materiality on a case by case basis²¹. Reference could be made to existing guidance to auditors²²: “the term ‘material significance’ requires interpretation in the context of the specific legislation applicable to the regulated entity. A matter or group of matters is normally of material significance to a regulator’s functions when, due either to its nature or its potential financial impact, it is likely of itself to require investigation by the regulator”.
- What opinion should Ofcom require the Independent Auditors to provide? Other NRAs typically require an opinion that states that the regulatory accounts have been “properly prepared” and “fairly present” in accordance with the RAGs. Examples of such opinion statements are included in the case studies in the Annex to this report. However for a data submission, the opinion would only be on the mechanical extraction and calculation of certain key data from the operator’s systems (as specified by Ofcom’s guidelines), and not on the regulatory accounts as a whole. As such, the Independent Auditors would only give an opinion as to whether the data submission has been “properly prepared” in accordance with Ofcom’s guidelines/requirements.
- Can the regulatory audit and statutory accounts be reconciled? The total revenue and total cost of the business, as set out in the statutory audit, typically becomes the “starting point” for the regulatory accounts. Thus, there is reconciliation between total revenue and total cost as reported in both accounts. However, it is not possible to reconcile volume data as this is not explicitly provided in the statutory financial statements and interconnection revenues may not be separately disclosed. Should Ofcom require a data submission rather than full regulatory accounts, it is likely that total revenue and total cost will not be the starting point. Therefore, reconciliation of the data submission to the statutory accounts will be difficult.

²¹ This is detailed in Section 5 of Ofgem’s “Electricity Distribution Price Control Revenue Reporting: Regulatory Instructions and Guidance - Version 3”, Reference: 84/07, April 2007

²² See Statement of Auditing Standard 620 The Auditors Right and Duty to Report to Regulators in the Financial Sector paragraph 14.

- Should the regulatory audit be combined with a Directors' sign-off? Often regulatory accounts are also signed off by the company's directors.
- Should the regulatory audit opinion be publicly available? Regulatory accounts are typically published and the audit opinion is usually also made publicly available. Data submissions are often viewed to contain commercially sensitive information and are therefore not published. In this case, it is unlikely that audit opinion could be made publicly available since an opinion is usually published alongside the information on which the opinion is being made. However Ofcom could require that the operators issue a public statement detailing whether they received an unqualified opinion on their submission and, if qualified, in what areas. Where an Independent Auditor's opinion is to be made publicly available this then brings in the possibility that the regulatory audit fee may be higher than in the case where the audit opinion will remain outside the public domain.

Advantages

- Assurance gained from an unqualified opinion from the Independent Auditors that the regulatory accounts / data submission have been properly prepared and fairly present in accordance with Ofcom's requirements. In the case of a data submission, this would be in the form of an unqualified opinion that the data submission has been properly prepared in accordance with Ofcom's requirements.
- The prospect of an independent audit may incentivise operators to provide full and correct information.
- The use of an independent audit is consistent with the approach taken by a number of NRAs, as detailed in the case studies in the Annex to this report.

Limitations

- A regulatory audit could be viewed as intrusive and burdensome by the operators. The extent of the burden will depend on whether full accounts or a data submission is required. The audit is likely to be viewed as most intrusive if Ofcom appoints the Independent Auditor.
- Assurance is gained only to the extent of the RAGs set out by Ofcom.
- Potential inconsistencies in approach from different firms of Independent Auditors.
- Potential conflict of interest if the firm of Independent Auditors performing the regulatory audit is also the firm which performs the statutory audit and where the regulatory audit follows the completion of the statutory audit.
- Unless the underlying data is also published, which may be inadvisable due to commercial sensitivity, then it may be inappropriate to publish the audit opinion.

Costs

- Examples of audit costs of full regulatory accounts and statutory accounts:
 - BT– statutory audit costs: £5.5m, regulatory audit costs: £1.1m
 - Severn Trent Water – statutory audit costs: £0.2m, regulatory audit costs: £0.1m
 - Kingston – statutory audit costs: £130k, regulatory audit costs: £15k

- Based on BT's regulatory audit costs and taking into account the absence of any requirements on costs, we estimate that the incremental audit cost would amount to approximately £100k - £150k.
- The cost of a regulatory audit of a data submission is likely to be less than that for full regulatory accounts. The extent of the fees will depend, amongst other things, on the amount of data to be submitted, the RAGs and level of materiality.
- In addition to the regulatory audit costs, the operator will also incur costs in preparing the submission. These costs were presented previously in section 4.2.

4.3.4 ISA 3000

The Independent Auditors would perform an audit based upon International Standard on Assurance Engagements 3000: *Assurance engagements other than audits or reviews of historical financial information*. This is, in principle, more assurance than agreed upon procedures as it requires the Independent Auditors to arrive at a conclusion in a positive form that the assertion, based upon certain specified criteria, is fairly stated rather than a reporting of factual findings where, ultimately, the conclusion is arrived at by the party reported to (in this case the regulator, Ofcom).

Key Considerations

- Does Ofcom have sufficient knowledge regarding the systems which the operators use? In order for Ofcom to design meaningful procedures to be performed, it needs to understand the operators' system. Ofcom could require the operator to produce a manual that sets out how it compiled its compliance submission, and design the procedures based on the manual.
- What specific procedures should Ofcom require the Independent Auditors to perform and report on? Ofcom could request that certain specified data within the submission be traced back to the underlying accounting records or systems. In addition, Ofcom could request that the detailed analysis of the data be obtained and a specified number of items from the analysis be traced back to supporting documentation.
- Would the Independent Auditors contract with Ofcom, MNOs or both parties? This was discussed previously in section 4.3.3.
- What would the form of the Independent Auditors report be – although Ofcom would require a reasonable assurance report, with different auditors working on different submissions there would be scope for inconsistency in how a reasonable assurance opinion would be drafted. Ofcom could consider publishing a model unqualified report to be followed.
- Should the Independent Auditor's report be made publicly available?

Advantages

- May be viewed as less burdensome by the operators.
- Assurance conclusion is reached by Independent Auditors rather than the regulator.
- Is set in an internationally recognised auditing framework standard.
- A reasonable assurance level is less in scope than a full regulatory audit and is more suited to data submission than full regulatory accounts.

Limitations

- The standard is not specific in terms of the format of reporting the Independent Auditors are required to give (there are clear steps to be considered in drafting the form of report but template wording is not provided acknowledging that it will vary between entities and engagements).
- There is limited precedent to support this approach in the regulated industries and the standard is relatively new so there are few precedents of it being used in the context of financial information.

4.3.5 Agreed Upon Procedures

The Independent Auditors agree a list of procedures that they will perform and report on. This does not provide as high a degree of assurance as a regulatory audit or an ISA 3000 report.

Key Considerations

- Does Ofcom have sufficient knowledge regarding the systems which the operators use? In order for Ofcom to design meaningful procedures to be performed, it needs to understand the operators' system. Ofcom could require the operator to produce a manual that sets out how it compiled its compliance submission, and design the procedures based on the manual.
- What specific procedures should Ofcom require the Independent Auditors to perform and report on? Ofcom could request that certain specified data within the submission be traced back to the underlying accounting records or systems. In addition, Ofcom could request that the detailed analysis of the data be obtained and a specified number of items from the analysis be traced back to supporting documentation.
- Would the Independent Auditors contract with Ofcom, MNOs or both parties? This was discussed previously in section 4.3.3.
- Should the Independent Auditor's report be made publicly available?

Advantages

- Assurance gained over specific areas that can be defined in detail.
- Ofcom will be able to rely on a report from a third party.
- Can be combined with a regulatory accounts audit to obtain additional assurance over specific areas.

Limitations

- May be viewed as intrusive and burdensome by the operators.
- Limited scope as the report from the Independent Auditors will be factual and will not express an opinion.
- Such reports can be published but tend to be private to the addressees.

Costs

- The costs will be dependent on the extent of the procedures required by Ofcom. We would expect the costs of performing agreed upon procedures on the accounts/data submission to be less than the costs of a regulatory audit.

4.3.6 Review by Ofcom

Ofcom could undertake a review of the data provided. However the operators are likely to view this as the most intrusive option.

Key Considerations

- What degree of checks would Ofcom undertake? For example, Ofcom could seek to undertake the degree of checks and review that would be undertaken in a regulatory audit. Operators may also not be keen to permit Ofcom this level of access to its operational systems and underlying data which is not specifically required to be entered on the data submission. Alternatively Ofcom could consider high level checks, for example, interviewing employees and requiring source systems to be listed out. However, this would significantly reduce the level of assurance to Ofcom. Ofcom could consider outsourcing this right to existing independent audit firms to conduct the checks on their behalf.

Advantages

- Ofcom would develop a better understanding of the operators' process and would be able to tailor its procedures to gain sufficient assurance on the data submission.
- Ofcom would be able to conduct its procedures first hand and would not have to rely on a report from a third party.
- Ofcom may choose to publish details of its review, although this may not be viewed as independent.

Limitations

- May be viewed as unnecessarily intrusive by the operators.
- Operators may provide Ofcom with less extensive access to underlying source data and systems than would be provided to an Independent Auditor.
- Ofcom may not have the required resources or expertises to conduct the reviews.
- Ofcom staff will, potentially, only need to undertake the review for a couple of months of each year. However staff will, presumably, be employed on a full time basis. Therefore, it

may be more cost effective to use Independent Auditors and a regulatory audit or agreed upon procedures.

- Ofcom will bear the incremental costs.
- There is limited precedent to support this approach. Based on a review of our case studies, this approach is only undertaken in Austria.

4.3.7 Accountants' report

The Independent Auditors confirm that they have assisted in the preparation of the data from the accounting records or systems, but do not provide any statement assuring the accuracy of the data. This may reduce error rates but only provides Ofcom with limited assurance.

Key Considerations

- What additional assurance does Ofcom gain? Ofcom would gain a small degree of assurance given that a third party has assisted in the preparation of the data submission. However, Ofcom would not have visibility of the extent and scope of the third party's involvement.
- Should the report be made publicly available?

Advantages

- May reduce the likelihood of errors being made.
- Limited assurance gained from evidence that a third party has been engaged to assist in the preparation of the data.

Limitations

- No duty of care exists between the Independent Auditors and Ofcom.
- Reliance on the operators and Independent Auditors preparing the data submission correctly.
- No statement of opinion is provided and so this provides only a slight increase in assurance levels
- Our case studies do not provide any international precedent for this approach

4.3.8 Sign-off by Board of Directors

Requiring sign-off by the Board of Directors may increase the importance that the operator places upon supplying complete and correctly compiled compliance information.

Key Considerations

- Requiring sign-off by the Board of Directors may increase the importance that the operator places upon supplying complete, accurate and correctly compiled compliance information.
- What is the Board of Directors signing off on? As part of the data submission, Ofcom could request a signed confirmation by the Board of Directors that states that the data submission has been reviewed by the board, and is complete, accurate, and correctly calculated and compiled.

Advantages

- May be viewed as non-intrusive by the operators.
- Does not significantly increase the costs of compliance.
- Limited assurance gained as the sign off would evidence increased scrutiny and an escalation of the review process to board level. Directors will not want to be found to have signed-off incorrect information.
- This is a common requirement for statutory and regulatory accounts.
- Director sign-off can occur for any data provided, e.g full regulatory accounts, detailed data submission or a single data point.
- It can be combined with any of the other assurance options discussed in this report, e.g. independent audit.
- Details of the sign-off may be published and increase public confidence in the accuracy of the information provided

Limitations

- Ofcom would be assuming that the Directors have performed a sufficiently detailed review of the submission.
- Limited action which Ofcom could take against the Directors if the submission were subsequently found to be incorrect.
- Unless combined with another option, may not provide Ofcom with assurance levels beyond that which it has currently

4.3.9 Operator Provides Reconciliation and Details of Data Sources

This is a low intrusion and low cost approach. However, it may not provide Ofcom with significantly increased levels of assurance.

Key Considerations

- What specific reconciliations are required? Regulatory accounts can be reconciled, at the total revenue and cost level, to statutory accounts. However a similar reconciliation is difficult for a data submission. Ofcom could require reconciliation to other regulatory submissions; however this does not prevent similar errors occurring in all submissions. Alternatively, Ofcom could require the operator to produce manual that sets out how it compiled its compliance submission, the sources of the data and any checks and controls that are around the source systems. Ofcom could enquire of the operators if these systems and controls have been tested by their internal audit department or external auditors, as part of the Sarbanes-Oxley compliance process. Ofcom could also enquire as to the findings of this testing. However, the operators may be reluctant to share this information with Ofcom.
- How specific can the RAGs be made? For example, different operators have different source systems so the RAGs will need to be sufficiently flexible to reflect this. However, high-level RAGs could introduce inconsistency between operator submissions.

- Can Ofcom publish the reconciliation and, if so, will it increase the public perception of compliance?

Advantages

- Minimal burden on operators.
- May be viewed as non-intrusive by the operators.
- Very limited assurance gained by understanding the source of the data.

Limitations

- Ofcom would be assuming that the reconciliation provided by the operators has been properly prepared and the data has been accurately and correctly extracted from the disclosed data sources.
- Ofcom may have limited understanding of what the actual data sources are.

4.3.10 No Reconciliation Required

This is the current process employed by Ofcom, whereby the operator submits an excel sheet containing limited data points. There is no reconciliation or methodology statement provided with the spreadsheet.

Key Considerations

- Can reliance be placed on the statutory audit process? As discussed previously, the statutory audit contains a check that the company is complying with laws and regulations. However, for materiality reasons, this is often undertaken by interviewing the regulatory team or through a high-level numbers review rather than by a full process and data review. Therefore, it is unlikely that Ofcom can achieve significant levels of assurance on charge control compliance from the statutory audit.

Advantages

- No burden on operators.
- Will be viewed as non-intrusive by the operators.

Limitations

- Ofcom would be relying on the operators to provide accurate and valid data, as there would be insufficient publicly available information for Ofcom to assess the accuracy or validity of the data.
- Ofcom cannot assess consistency between operators.
- Ofcom cannot state that it has assessed charge control compliance.

A1 Case Studies

In this section, we provide some case studies of how NRAs in other industries and other jurisdictions ensure that operators are complying with their charge controls. In particular:

- Section A.1 contains details of regulated operators in other industries in the UK;
- Section A.2 contains details of regulated telecommunication operators in Europe; and
- Section A.3 contains details of regulated telecommunication operators elsewhere.

These case studies are based upon a review of regulatory documents and responses from NRAs to our questionnaire. In some instances, requested clarifications on issues remain outstanding. This has limited the detail of the description of the compliance environment that we have been able to provide.

A1.1 UK Regulated Operators

Name of regulator	Office of Gas and Electricity Markets (Ofgem)
Industry and Geographic Organisation	Ofgem regulates gas and electricity markets in the UK
Nature of Regulatory Environment	Ofgem has set price caps on the energy transportation services of the 14 companies running the regional electricity networks (also known as distribution network operators or “DNOs”); the 4 companies that operate the energy transmission networks; and the 4 companies that own the local gas distribution networks.
Description of Compliance Environment	
<ul style="list-style-type: none"> • Regulatory Instructions and Guidance (RIGs)²³ provide a framework for the collection and provision of accurate and consistent information from distribution service providers. Ofgem require DNOs to submit actual and forecast revenue and associated information relating to demand, generation, metering, non-regulated services, and <i>de minimis</i> revenues. • Ofgem provides each DNO with a copy of its allowed revenue model although the licensee does not necessarily have to submit the required data using the model. Using the model means that operators only need to complete the relevant input data and the model calculates the remaining relevant information. If the operator does not use the model then it must calculate all the required information itself. • RIGs specify minimum levels of accuracy (e.g. the number of decimal places required, unit measures) • The detailed return must be accompanied by an Auditors’ report and a letter from the Auditors which sets out the audit procedures they have used to reach their opinion. The 	

²³ These are available online see

<http://www.ofgem.gov.uk/Networks/ElecDist/PriceCtrls/RevandPrice/Pages/RevandPrice.aspx>

RIGs set out which sections of the data return must be audited. Operators are required to submit their data in both soft and hard copy.

- Ofgem set out in the RIGs that it will undertake “as much analysis as is deemed necessary to ensure that its objective [to ensure that the DNOs are in compliance with their charge control obligations] is satisfied.”
- Should there be an industry change or developments which would materially affect the consistency or accuracy of information, Ofgem would determine the implications for regulatory reporting on a case by case basis.
- Appendices A and B of the RIGs detail the data (specific data lines) required by Ofgem.
- The audit of the detailed return is currently based on “Agreed Upon Procedures”. As such, Auditors do not express an assurance opinion in their report (the International Standard on Related Services 4400, currently used by Ofgem as a basis for auditors reporting, explicitly states that auditors report should contain a “...statement that the procedures performed do not constitute either an audit or a review and, as such, no assurance is expressed;...). However, auditors should state whether in their opinion: “ (a) the information in relation to each of the items referred to in the statement has been properly prepared; and (b) the amounts presented are in accordance with the licensee’s records which have been maintained in accordance with paragraph 2 of this condition.” (Condition 50, Part D of “Electricity Distribution License: Standard Conditions”

An example of auditors’ opinion from regulatory accounts includes:

“In our opinion the Regulatory financial statements fairly present in accordance with condition 42 of the Company’s Regulatory License [...] the state of the Company’s affairs at 31 March 2005 [...] and have been properly prepared in accordance with condition 42 of the Regulatory license and accounting policies.”

The detailed return and the auditors opinion are not publicly available.

Name of regulator	Water Services Regulation Authority (Ofwat)
Industry and Geographic Organisation	Water and sewerage in England and Wales
Nature of Regulatory Environment	The water and sewerage industries in the UK are characterised by local monopolies which are regulated by Ofwat. Using comparative competition, Ofwat sets price and output caps every five years which specify how much charges can increase in each year. Controls apply to total volumes (i.e. there is no separate price control for different types of users).

Description of Compliance Environment²⁴

- Ofwat requires all regulated operators to submit comprehensive annual reports (“June Returns”) which are subject to independent scrutiny by Ofwat’s “reporters”. The June Return contains detailed information on revenues, volumes and costs among other things. The reporting requirements are the same for each operator.
- Ofwat conducts an independent review of all company returns it receives. Ofwat approves all appointments of reporters and sets out guidelines for the role. The reporters report directly to Ofwat although they have a duty of care both to Ofwat and the regulated water companies.
- The Reporters and reporting teams act as professional commentators and certifiers on the regulated activities of individual water companies. The Reporter gives Ofwat his/her professional opinion on the company process for developing its submission, and on the accuracy and reliability of the information. In particular, the Reporters Protocol states that, in their report, Reporters are required to address the following issues: compliance with guidelines, company assumptions, efficiency assumptions, assessment of company approach, areas of concern, differences of opinion and any other additional relevant information.
- Reporters’ general report is not publicly available as it is considered to be commercially confidential, as stated in Ofwat website.

An example of auditors’ opinion from regulatory accounts includes:

“In our opinion the Regulatory Accounts of the Company for the year ended 31 March 2006 fairly present in accordance with Condition F of the Instrument of Appointment [...], the Regulatory Accounting Guidelines issued by the Regulator and the accounting policies set out in note 1 to the Regulatory Accounts, the state of the Company’s affairs [...] on an historical cost and current cost basis, [...] and have been properly prepared in accordance with those Conditions, Guidelines and accounting policies”. (PwC for Central Network East plc)

The Public Domain version of the June Returns are available on the Ofwat website.

Name of regulator	Postal Services Commission (Postcomm)
Industry and Geographic Organisation	Postcomm is the independent regulator of the postal market in the UK. It is responsible for ensuring that postal operators meet their obligations to their customers in the UK.
Nature of Regulatory Environment	Postcomm regulates Royal Mail as it is the dominant provider of postal services in the UK serving more than 90% of the letters market. Royal Mail is subject to both price and quality control.

²⁴ Source: [http://www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/AttachmentsByTitle/be_050503.ppt/\\$FILE/be_050503.ppt#398,28,Reporters](http://www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/AttachmentsByTitle/be_050503.ppt/$FILE/be_050503.ppt#398,28,Reporters)

Description of Compliance Environment²⁵

- Postcomm applies a price cap to two baskets of services (Tariff Basket A and Tariff Basket B) as well as to access services.
- Condition 21 of Royal Mail's licence outlines the data that Royal Mail is required to submit to Postcomm. Royal Mail is required to submit its estimates of its revenues and volumes from each tariff basket over the year as well as estimates of any increased costs that are permitted to be passed on (such as pension deficit costs). Postcomm requires that Royal Mail provides "fairly representative" prices for each of the regulated services. This is defined as being the modal price or other price that is certified by Royal Mail's auditors as being fairly representative. If such a price is not certified, Royal Mail must be able to provide Postcomm with sufficient data and details of methodology to provide assurance of how representative the data are.
- The data submitted by Royal Mail must be reviewed by auditors and the auditors must supply a statement about the accuracy of the data before being submitted to Postcomm. Auditors are appointed by the licensee and must be independent and approved by Postcomm.
- An example of an auditor's opinion includes:
 - "In our opinion the Regulatory Financial Statement of the Services for the year ended 26 March 2006, have been properly prepared, in all material respects, in accordance with the "Regulatory accounting principles and basis of preparation" on pages 14 to 19 and with the requirements of paragraph 4(a) of Condition 14 of the Licence" (Ernst and Young LLP for Royal Mail)

Name of regulator	Office of Rail Regulation (ORR)
Industry and Geographic Organisation	Regulation of access charges for track and stations in the UK.
Nature of Regulatory Environment	The ORR imposes a hybrid revenue/price cap to the track access provided by Network Rail (the infrastructure manager) to train operators. The ORR reviews Network Rail's output, revenue requirements and access charges every five years. The revenue cap applies to the revenue earned from the fixed charges paid by passenger operators (around 90% of Network Rail's income from track access charges). The price cap is disaggregated (e.g. by vehicle type) and applies to the variable charges payable by all train operators.
Description of Compliance Environment	

²⁵ Royal Mail's licence is available online, see <http://www.psc.gov.uk/postal-licences-and-operators/licensed-postal-operators/royal-mail.html>

- The ORR does not collect price information as train operators are able to monitor Network Rail's charges themselves since the charges are set out in contracts between themselves and Network Rail.
- Network Rail is required under its licence conditions to produce an annual return which is necessary to reconcile actual with planned outputs, activity and expenditure where there is significant variance. These are audited by the ORR's independent reporters.
- Network Rail is also required to provide any other data which the ORR may reasonably require. The ORR also receives data every four weeks about the quality of the physical network and the impact on service. Independent auditors verify the accuracy and reliability of data and systems.
- The ORR currently has three Reporters in place which look at different aspects of Network Rail's activities.
- An example of a Reporter's opinion includes:

"...We confirm Network Rail has prepared the Annual Return 2006 in accordance with its regulatory and statutory obligations using procedures prepared by Network Rail and agreed with Office of Rail Regulation [...] We confirm the Annual Return 2006 was submitted in accordance within the timescale required by Condition 15 of Network Rail's Network Licence..."

The annual returns are a public document and can be found on Network Rail website. The Reporter report is also publicly available from the ORR website.

Name of regulator	Civil Aviation Authority (CAA)
Industry and Geographic Organisation	Regulation of Airport Charges
Nature of Regulatory Environment	The CAA currently regulates the airport charges at Heathrow, Gatwick, Stansted and Manchester airports. These charges consist of landing charges, per passenger charges for the use of the airport terminal and the airplane parking charges. This is not a price cap but a cap on the revenue yield per customer.
<ul style="list-style-type: none"> • The airports are required to submit revenue and volume data which must be independently audited and signed off by two board directors. • The airports are able to choose their own auditor and the CAA does not set out guidelines for the auditor. The auditor's statement contains its opinion on the way in which figures are produced and that they are properly extracted and is subject to various disclaimers. These regulatory accounts are not publicly available. The auditors only have a duty of care to the airports. 	

A1.2 European Communications Regulatory Authorities

Name of regulator	ARCEP
Industry and Geographic Organisation	French communications regulator
Nature of Regulatory Environment	Mobile termination rates (Market 16) of the three mobile network operators subject to charge control.
Description of Compliance Environment <ul style="list-style-type: none"> • All three mobile network operators in France are required to submit regulatory accounts on an annual basis to show that they are complying with their accounting separation and cost reporting requirements which were imposed by ARCEP because they were each found to have SMP in the market for call termination (Market 16). • ARCEP determines the format of the data submission. • These accounts, the internal procedures and the way in which data are gathered are audited by an independent auditor. • ARCEP appoints the independent auditor and the same firm is used in all the audits. • Auditors are required to provide “reasonable assurance” that the data provided have been provided in consistency with the ARCEP guidelines and that there are no significant anomalies. • The regulatory accounts and the audit report are not publicly available. 	

Name of regulator	ANRC
Industry and Geographic Organisation	Romanian communications and information technology regulator
Nature of Regulatory Environment	
Description of Compliance Environment <p>Current requirements are:</p> <ul style="list-style-type: none"> • Dominant operators are required to prepare regulatory financial statements that are subject to an independent audit. This is a requirement for the fixed operator. • Auditors are required to provide an opinion on whether the statements “fairly presents” compliance with the price control. • The regulator (ANCR) reviews the submitted statements and can, if necessary, ask additional information from both the incumbent and the auditors. <p>Regarding the mobile market, accounting separation has been imposed on mobile operators found to have SMP. However, guidelines for the preparation of separated financial statements are not yet completed and therefore mobile operators are not at present required to submit any data to the regulator. Compliance with the price control is currently verified by looking at the interconnection</p>	

agreements between operators.

Name of regulator	CMT
Industry and Geographic Organisation	Spanish Telecommunications regulator
Nature of Regulatory Environment	Wholesale and retail price controls applied to fixed-line operator. MNOs are subject to termination rate and roaming charges controls
Description of Compliance Environment Current requirements for mobile operators (for roaming charges control): <ul style="list-style-type: none"> • To build a cost accounting system in historical and current bases. LRIC is not yet requested. • To provide the CMT yearly with the results of such system for all the services (e.g. roaming out, roaming in, SMS). • The results of the costing system must be audited by an independent audit contracted by the operator. Usually the auditor is the financial auditor of the operator. • After that, the CMT requests a second audit. In this case the auditors are paid by the CMT. 	

Name of regulator	RRT
Industry and Geographic Organisation	Lithuanian communications regulator
Nature of Regulatory Environment	Wholesale and retail price controls applied to fixed-line operator. MNOs are subject to termination rate controls (the obligation at present is just “not to raise MTRs”)
Description of Compliance Environment Current requirements for the fixed operators are: <ul style="list-style-type: none"> • Auditing of incumbent costing system and of pricing of regulated services. • Auditing has to comply with the International Accounting Standards. • The cost accounting rules obliges SMP operator to cooperate with the auditor selected by RRT. • The minimal requirements for the scope of the audit are to check: <ul style="list-style-type: none"> ○ Transposition of data from financial statements (general ledger) into the costing system (consistency with audited fin. statements); ○ The calculation of WACC; ○ The costing system; ○ If the prices of regulated services were cost-oriented; and ○ If the accounting separation system is implemented according the requirements set 	

<p>and if the accounting separation system allows to identify internal transfers.</p> <p>Current requirements for the mobile operators are:</p> <ul style="list-style-type: none"> • Publication of RIO, subject to transparency obligations; and • No obligation to submit data to the regulator.
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Name of regulator	PTS
Industry and Geographic Organisation	Swedish telecommunications regulator
Nature of Regulatory Environment	Wholesale and retail price controls applied to fixed-line operator. MNOs are subject to termination rate controls
Description of Compliance Environment <p>Currently, incumbent compliance is monitored by comparing the cost results from the regulator's LRIC Hybrid model with the operator's price list available on their website. This also applies to mobile operators.</p>	

Name of regulator	UKE
Industry and Geographic Organisation	Polish Communications regulator
Nature of Regulatory Environment	Wholesale price controls are applied to both fixed and mobile operators
Description of Compliance Environment <p>Current requirements are:</p> <ul style="list-style-type: none"> • Regulatory accounts, on FAC and LRIC basis, and accounting manuals are submitted by SMP operators and formally approved by UKE. SMP operators include the mobile operators. • Regulatory accounts are independently audited, at the firm's expense. It is unclear as to whether there is also a duty of care to the regulator. • After the audit, UKE receives the regulatory accounts and the auditor's statement. • Price control compliance is determined based upon these accounts. <p>We have requested information as to: (i) whether both fixed and mobile operators are required to provide regulatory accounts; and (ii) the extent to which this used in price control compliance. However this has not been forthcoming.</p>	

Name of regulator	AGCOM
Industry and Geographic Organisation	Italian Telecommunications and Media regulator
Nature of Regulatory Environment	Mobile termination rates (Market 16) of the three

	mobile network operators subject to charge control.
Description of Compliance Environment Current requirements are: <ul style="list-style-type: none"> • Mobile operators are required to submit, on an annual basis, audited regulated financial statements on both current cost accounting (CCA) and historical cost accounting and LRIC basis that detail the cost per product of all regulated products. • Financial statements are audited by an independent auditor nominated by the regulator. 	

A1.3 Communications Regulatory Authorities Elsewhere

Name of regulator	ICASA, South Africa
Industry and Geographic Organisation	Communications regulator in South Africa
Nature of Regulatory Environment	Price controls are applied to the fixed line incumbent (Telkom). ICASA is currently consulting on price controls for the mobile operators
Description of Compliance Environment <ul style="list-style-type: none"> • The regulated incumbent, Telkom, is required to provide regulated accounts on an FAC and LRIC • These accounts are subject to independent audit. The contract is between Telkom and the auditor, however, there is a duty of care to ICASA. • The regulatory accounts are sufficiently disaggregated such that it can be directly checked whether Telkom has complied with price controls on specific products. • The current regulation allows ICASA to require the MNOs to provide full regulatory accounts. However, currently this is not required although this may change should the MNOs be subjected to a price control on termination, as is widely expected. 	

Name of regulator	CRTC, Canada
Industry and Geographic Organisation	Canadian Radio, Television and Telecommunications regulator
Nature of Regulatory Environment	Price control of services in telecommunication markets
Description of Compliance Environment For regulated services (which do not include mobile services, given that Canada still applies a RPP regime), the current requirements are: <ul style="list-style-type: none"> • Pass an “imputation test”. 	

- Submission to the regulator, with Director sign-off.
- The CRTC can, following the submission, issue questions on costing data etc.

Name of regulator	ACCC, Australia
Industry and Geographic Organisation	Australian Competition and Consumer Commission
Nature of Regulatory Environment	Wholesale price controls are applied to the incumbent fixed line operator and all mobile operators
Description of Compliance Environment <p>No compliance assurance procedure is currently in place for mobile operators.</p> <p>For the fixed operator, the following requirements apply:</p> <ul style="list-style-type: none"> • Provide a final, independently audited report providing full details of its compliance with the price cap requirements. • The independent auditor is appointed by the regulator, ACCC. This allows ACCC to be involved in the audit process and to have direct access to the auditor's advice. 	

Name of regulator	FCC, USA
Industry and Geographic Organisation	Telecommunications, USA
Nature of Regulatory Environment	Incumbent local exchange carriers (ILECs, fixed line operators) have their tariffs regulated according to either: <ul style="list-style-type: none"> • Price cap ratemaking methodology; or • Rate-of-return ratemaking methodology
Description of Compliance Environment <p>Current requirements are:</p> <ul style="list-style-type: none"> • ILECs that file tariffs under the price cap methodology are required to submit revised tariffs on an annual basis. • ILECs that file tariffs under the rate-of-return methodology are required to submit revised tariffs every other year. • ILECs subject to price cap regulation should submit both a short and a long TRP (Tariff Review Plan). • ILECs must use the Commission's Electronic Tariff System (ETFS) to file all tariff material. 	

Name of regulator	Fair Trade Commission
Industry and Geographic Organisation	Utilities regulator in Barbados
Nature of Regulatory Environment	Wholesale and retail price caps applied to fixed-line operator. MNOs are subject to termination rate controls
Description of Compliance Environment <p>The Utilities Regulation Act requires each service provider to keep books, proper accounts and adequate financial records in relation to conduct of business.</p> <p>Regulatory accounting obligations are imposed on the fixed and mobile business divisions of the incumbent operator, C&W. Currently the second mobile operator is not subject to these requirements, although there is discussion concerning this.</p> <p>C&W have a regulatory cost model which is not audited but for which C&W must produce reconciliation back to the statutory accounts. The CEO of the company submits the cost model and regulatory accounting statements to the regulator as being correct. Often the CEO employs auditors to provide additional comfort that these are correct since he would be liable for any errors.</p> <p>Two separate regulatory accounting statements are produced. One for regulated services and one for non regulated services. All services are included in order that there can be full reconciliation back to the values that are provided in the statutory accounts. For each price cap service, additional statements are provided showing cost, revenue, profit and return on capital employed. The Commission verifies this by checking the links from these to the statutory accounts.</p>	

Glossary

Terminology	Definition
CCA (Current Cost Accounting)	An accounting method which considers assets at their current values, unrelated to the historic price at which assets have been acquired.
FAC (Fully Allocated Cost)	An accounting method to distribute all costs among the firm's products and services
LRIC (Long Run Incremental Cost)	An incremental cost is the forward-looking economic cost incurred to produce an additional quantity or increment of output.
WACC (Weighted average cost of capital)	Method of calculating a firm's cost of capital based on weighting of proportion of equity and debt in the firm financial structure.
IFRS (International Financial Reporting Standards)	Set of accounting standards issued by the International Accounting Standards Board.
US GAAP (Generally Accepted Accounting Principles)	Accounting rules used in the US to prepare, present and report financial statements. It differs from the IFRS although efforts are being made to reconcile differences.
SOX (Sarbanes-Oxley Act 2002)	Among other matters related to auditors independence and corporate governance, the Act establishes the Public Company Accounting Oversight Board, a new agency responsible for overseeing, regulating and disciplining accounting firms in their role as auditors.

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