



Notification of modification to Direction under General Condition 21.1 on Quality of Service

Explanatory statement

Statement

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Section 1

Summary

- 1.1 The provision of comparable Quality of Service Information (“QoS”) is beneficial to consumers and Ofcom is committed to ensuring it is supplied. On 27 January 2005 Ofcom published *A Statement on setting quality of service parameters: Notification of Direction* <http://www.ofcom.org.uk/consult/condocs/qualitystate/statement/#content>.
- 1.2 The Direction requires specified Communications Providers providing voice services at a fixed location to publish QoS information covering: supply times, fault rates and fault repair times; billing complaints; and complaint resolution times. The Direction stipulates that data collection should commence within nine months of Ofcom publishing the Direction (28 October 2005), the first publication of that period’s data should be six months after that (28 April 2006), followed by regular publication of data in at least six monthly intervals thereafter (28 October 2006 and beyond).
- 1.3 The forum established to implement the Direction, Topcomm, subsequently wrote to Ofcom requesting a short extension to the timetable to allow for a pilot phase for testing prior to publication. Under Topcomm’s proposals, the data collected between October and December 2005 would be used as ‘test’ data. The formal data collection would be considered to have commenced on 1 January 2006, with the first set of results proposed to cover January to March 2006, published in July 2006.
- 1.4 Any change to a Direction required a modification, on which Ofcom is required to consult.
- 1.5 Ofcom took Topcomm’s proposal under consideration and on 27 January 2006 published a Notification of its proposal to modify the definition of “Measurement Commencement Date” in the Direction to mean one year, rather than nine months <http://www.ofcom.org.uk/consult/condocs/qosmodification/QoSdirection.pdf>. The effect of this change would be to extend the deadline for data publication to 28 July 2006.
- 1.6 Ofcom’s proposal was to modify the Direction, published on 27 January 2005 as follows:
 - The definition of “Measurement Commencement Date” being modified to mean one year (rather than nine months) from the date the Direction was published, being the date when the Communications Providers begin to accumulate the relevant Quality of Service Parameters data in order comply with the obligations set out in paragraph 1 of the Direction.
- 1.7 The closing date for receipt of representations was Tuesday 28 February 2006. Ofcom received five responses, each of which was broadly supportive of the proposed modification.

Next steps

- 1.8 For the reasons set out in the consultation of 27 January 2006 and this explanatory statement, Ofcom is issuing a modified Direction under Section 49 of the Communications Act 2003 and General Condition 21, requiring specified Communications Providers which provide Publicly Available Telephone Services

over a Public Telephone Network at a fixed location to provide quality of service information. The Direction is modified as follows:

“The definition of “Measurement Commencement Date” being modified to mean one year (rather than nine months) from the date the Direction was published, being the date when the Communications Providers begin to accumulate the relevant Quality of Service Parameters data in order comply with the obligations set out in paragraph 1 of the Direction.”

- 1.9 The period by which measurements should commence has been modified to allow for the necessary testing of the robustness of data systems and data collection processes to ensure that the requirements of the Direction will be satisfied. The extension in the timeline could also be used to test the functionality and user friendliness of the independent website before the public launch.
- 1.10 Those Communications Providers covered by the existing Direction are obliged to continue with data collection and preparation. Any provider who is unable to demonstrate that its processes and procedures will be able to deliver to the agreed timescale, may be subject to formal investigation by Ofcom.
- 1.11 User testing on the accessibility and user friendliness of the publication will be an integral part of the development of the initiative. In addition, Ofcom will continue to monitor consumer attitudes and behaviour with respect to QoS information. Towards the end of the year we will undertake a review of End-User satisfaction with the QoS published information, including how it is used and valued by residential and business consumers. Ofcom will also monitor how the needs of vulnerable consumers are being met.

Section 2

Explanatory statement

Introduction

- 2.1 The provision of comparable Quality of Service (“QoS”) Information is beneficial to consumers and Ofcom is committed to ensuring it is supplied.
- 2.2 On 27 January 2005 Ofcom published *A Statement on setting quality of service parameters: Notification of Direction* <http://www.ofcom.org.uk/consult/condocs/qualitystate/statement/#content>. The Direction requires specified Communications Providers providing voice services at a fixed location to publish QoS information covering: supply times, fault rates and fault repair times; billing complaints; and complaint resolution times. The measurement commencement date was set at nine months from the date of publication of the Direction with publication of the first set of results (covering October to December 2005) six months later.
- 2.3 The forum established to implement the Direction, Topcomm, which comprises over 20 companies representing approximately 30 brands, has made good progress and data collection started on 1 October 2005. However a number of system and process issues came to light which Topcomm wished to resolve prior to publication.
- 2.4 On 20 October 2005, Topcomm wrote to Ofcom requesting that Ofcom classify the period of data collection between 1 October and 31 December as a pilot phase, with formal data collection considered to have started on 1 January 2006. Topcomm has proposed that the data for the period January to March 2006 would be published in July 2006, followed by publication of the data for the period April to June in October 2006.
- 2.5 Ofcom’s primary concern is to ensure that the quality of service information benefits consumers, which requires the data to be objective, comparable and up-to-date. We therefore consider it sensible to allow a slightly extended timetable to ensure Topcomm is able to achieve those objectives. We still expect the publication of six months of data starting on or before 28 July 2006, and at least six monthly intervals thereafter, as set out in the January 2005 Direction. As Topcomm has indicated it will be collecting data in three monthly batches, Ofcom would welcome more frequent publication to ensure the published data is up-to-date.
- 2.6 Any change to the Direction requires a modification, on which Ofcom is required to consult. On 27 January 2006 Ofcom published its proposal to delete the words “nine months” in the definition of “Measurement Commencement Date” in paragraph 5 (g) the Direction and replace them by the words “one year”, thereby extending the deadline for data publication by three months to 28 July 2006.
- 2.7 Ofcom’s proposal was to modify the Direction, published on 27 January 2005 as follows:
 - The definition of “Measurement Commencement Date” being modified to mean one year (rather than nine months) from the date the Direction was published, being the date when the Communications Providers begin to accumulate the relevant Quality of Service Parameters data in order comply with the obligations set out in paragraph 1 of the Direction.

2.8 The closing date for receipt of representations was Tuesday 28 February 2006.

Responses to the consultation

- 2.9 Ofcom received five responses to the consultation, three of which were from Topcomm industry participants: BT, Cable and Wireless, and Telewest; one from the trade body representing a number of Topcomm participants: Federation of Communication Services ("FCS") and one from the Topcomm Secretariat. The responses are published on Ofcom's website <http://www.ofcom.org.uk/consult/condocs/qosmodification/responses/>.
- 2.10 All respondents were broadly supportive of the proposal to extend the deadline for publication by three months to 28 July 2006. The respondents considered the proposal to be a pragmatic approach, which was more likely to benefit consumers than a strict adherence to the original timetable. The majority of the respondents stated that the extension of the deadline would ensure that consumers would be provided with accurate and comparable data.
- 2.11 The majority of the respondents considered that the original timetable for implementation was too demanding. In particular, the FCS stated that insufficient time had been allocated for establishing a co-regulatory group responsible for implementation and that there should have been a clearer division of responsibility between the co-regulatory body and Ofcom. The FCS stated that it would be useful to review the experience gained from this project and the lessons learned for the creation of similar co-regulatory bodies in the future.
- 2.12 In its response, Telewest Broadband expressed reservations about the ultimate value of the QoS information to consumers. It supported having an ongoing review of the scheme in order to have a clearer picture of the benefit to consumers. Telewest Broadband also stated that it would like the scheme to be extended to all relevant Communications Providers offering public services, including the emergent VoIP new voice service providers.

Ofcom's response to the consultation responses

- 2.13 In line with its regulatory principles, Ofcom has encouraged the market to provide information on QoS indicators through an industry-led approach. We welcome the commitment demonstrated by Topcomm to date and the progress made.
- 2.14 Ofcom is currently undertaking a consultation on its approach to consumer policy issues going forward (see http://www.ofcom.org.uk/consult/condocs/ocp/ocp_web.pdf). One of its proposals is to undertake a review of the circumstances in which self- and co-regulation are likely to be effective.
- 2.15 In order to provide the maximum benefit to consumers, the QoS information needs to keep pace with changing technological developments. Ofcom intends to review End-User satisfaction with the QoS published information by the end of 2006, following the publication of the first set of results. The review will be based on End User feedback (including the usefulness of the chosen indicators), levels of use (segmented by consumer group where possible) and levels of participation in the scheme. Ofcom will also monitor how the needs of vulnerable consumers are being met.

Ofcom's duties and functions

- 2.16 Ofcom, in reaching its decision on the provision of QoS information to End-Users in January 2005, considered its principal duty set out in Section 3 (1) of the Communications Act 2003 (the "Act"). Section 3 (1) of the Act states that in carrying out its functions, Ofcom shall further the interests of citizens in relation to communications matters, and the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.17 In this regard, Ofcom considered amongst other things the requirements in section 3 (2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services, and section 3 (4) of the Act, namely, the:
- a) Desirability of promoting competition in relevant markets;
 - b) Desirability of promoting and facilitating the development and use of effective forms of self-regulation;
 - c) Desirability of encouraging investment and innovation in relevant markets;
 - d) Needs of persons with disabilities, of the elderly and of those on low incomes;
 - e) Opinions of consumers in relevant markets and of members of the public generally; and,
 - f) Different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.
- 2.18 In order to secure the availability throughout the UK of a wide range of electronic communications services, as set out in section 3 (5) of the Act, Ofcom aims to further the interests of consumers by having regard, in particular, to the interests of those End-Users in respect of choice, price, QoS and value for money.
- 2.19 Section 4 of the Act sets out Ofcom's duties for the purpose of fulfilling its Community obligations, Ofcom has considered, amongst other things, the requirement to promote competition and the interests of all persons who are citizens of the EU; and the requirement to encourage such compliance with the standards mentioned in section 4 (10) of the Act as is necessary for, amongst other matters, securing freedom of choice for the customers of the Communications Providers. Section 4 (10) of the Act includes the standards of the European Telecommunications Standards Institute (ETSI). Ofcom considers these are still relevant to this proposed modification.
- 2.20 Ofcom wishes to ensure that the QoS information provided is relevant, accessible and accurate such that End-Users will be in a position to make informed purchasing decisions based on reliable and comparable information. Ofcom has consulted on its proposal to modify the Direction to allow for an extended deadline for publication. Having received no representations against the proposal, Ofcom considers it has acted in accordance with its relevant duties in making this modification to the Direction.

Section 49 and the modification of Directions

- 2.21 On 27 January 2006, Ofcom published a notification of its proposal to modify the Direction, as follows:

“The definition of “Measurement Commencement Date” being modified to mean one year (rather than nine months) from the date the Direction was published, being the date when the Communications Providers begin to accumulate the relevant Quality of Service Parameters data in order to comply with the obligations set out in paragraph 1 of the Direction.”

- 2.22 In making this modification to the Direction, Ofcom is satisfied that it meets the tests set out in section 49 of the Communications Act (“the Act”).

- a) Ofcom considers that the modification is **objectively justifiable** in relation to furthering the interests of citizens-consumers in respect of choice, price, quality of service and value for money. Ofcom considers it is practicable to allow for an extended timetable to ensure that the data provided to end users is comparable, adequate and up-to-date.
- b) Ofcom also considers that the modification is **not unduly discriminatory** against particular persons or against a particular description of persons, as the proposed modification of the Direction applies equally to all relevant Communications Providers covered by the Direction.
- c) The modification is **proportionate** to what it is intended to achieve because it allows those affected a longer period of time to comply with the Direction and is intended to enhance the reliability of the output.
- d) The modification is **transparent** because Ofcom has undertaken a formal consultation in which it clearly set out its reasoning.

- 2.23 The modification of the Direction extends the initial publication of comparable QoS indicators for fixed voice services by three months to on or before 28 July 2006.

Annex 1

Direction modifying a Direction given under section 49 of the Communications Act and General Condition 21 requiring specified Communications Providers which provide Publicly Available Telephone Services over a Public Telephone Network at a fixed location to provide quality of service information

A Notification of this proposal was published on 27 January 2006

WHEREAS:

- A. the Director General of Telecommunications (the 'Director') issued on 22 July 2003 the General Conditions Notification, which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48(1) of the Act ("General Conditions Notification");
- B. General Condition 21.1 in Part 2 of the Schedule to the General Conditions Notification provides that Communication Providers shall, on the direction of Ofcom, publish comparable, adequate and up to date information for End-Users on the quality of its service;
- C. Ofcom issued a notification on 1 September 2004 pursuant to section 49(4) of the Communications Act 2006 (the "Act") of a proposal to give a Direction under Condition 21.1 directing the appropriate quality of service information to be published (the "Notification");
- D. in the Notification and accompanying explanatory Statement, Ofcom invited representations about any of the proposals therein by 4 October 2004;
- E. a copy of the Notification was sent to the Secretary of State, the European Commission and to the regulatory authorities of every other Member State as Ofcom considered it appropriate to do so in accordance with section 50 of the Act;
- F. Ofcom received responses to the Notification and having considered every such representation made to them in respect of the proposals set out in the Notification gave a Direction on 27 January 2005 under section 49 of the Communications Act 2003 and General Condition 21 requiring specified Communications Providers which provide Publicly Available Telephone Services over a Public Telephone Network at a fixed location to provide quality service information (the 'Direction');
- G. on 27 January 2006, Ofcom published a notification of their proposal to modify the Direction, in accordance with section 49 of the Act (the "January 2006 Notification");

H. a copy of the January 2006 Notification was sent to the Secretary of State, the European Commission and the regulatory authorities at every Member State in accordance with section 50 of the Act;

I. in the January 2006 Notification and accompanying explanatory statement, Ofcom invited representations about the proposal therein by 28 February 2006;

J. by virtue of section 49(9) of the Act, Ofcom may give effect to the proposal set out in the Notification, with or without modification, only if:

a) they have considered every representation about the proposal that is made to them within the period specified in the January 2006 Notification; and

b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

K. Ofcom received responses to the January 2006 Notification and have considered every representation made about the proposed modified Direction set out in the January 2006 Notification and accompanying consultation document; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose;

L. for the reasons set out in the explanatory statement accompanying this modified Direction, Ofcom are satisfied that, in accordance with section 49(2) of the Act, this Direction is:

(i) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;

(ii) not such as to discriminate unduly against particular persons or against a particular description of persons;

(iii) proportionate to what it is intended to achieve; and

(iv) in relation to what it is intended to achieve, transparent;

M. for the reasons set out in the explanatory statement accompanying this modified Direction, Ofcom have considered and acted in accordance with the relevant requirements set out in sections 4 of the Act and their duties in section 3 of the Act; and

NOW, therefore, pursuant to section 49 of the Communications Act 2003 and General Condition 21, OFCOM hereby gives the following modification to the January 2005 Direction requiring specified Communications Providers which provide Publicly Available Telephone Services over a Public Telephone Network at a fixed location to provide quality service information.

1. The words "nine months" in the definition of Measurement Commencement Date in paragraph 5 (g) of the Direction are deleted and replaced by the words "one year".

2. Thus, the definition of Measurement Commencement Date in paragraph 5 (g) of the Direction is as follows:

"(g) "Measurement Commencement Date" means one year from the date this Direction is published, being the date when a Communications Providers begins to

accumulate the relevant Quality of Service Parameters data in order to comply with the obligations set out in paragraph 1 above;”

2. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in the Direction and otherwise any word or expression shall have the same meaning it has in the General Conditions Notification (including in the Annexes) and otherwise any word or expression shall have the same meaning as it has in the Act.
3. For the purpose of interpreting this Direction:
 - a) headings and titles shall be disregarded; and
 - (b) the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.
4. This Direction shall take effect on the day it is published.

Claudio Pollack

Director of Consumer Policy

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

29 March 2006