

Confirmation decisions under section 96C and 139A of the Communications Act relating to contraventions of General Condition 18 of the General Conditions of Entitlement and of requirements imposed under section 135 of the Communications Act 2003

Notifications under s96C and s139A of the Communications Act 2003 served on Cloud M by the Office of Communications

Non-confidential version - redactions are indicated with [✂]

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1. Executive Summary

- 1.1 This document explains Ofcom’s decision to issue Cloud M Limited (“Cloud M”) with confirmation decisions under:
- a) section 96C of the Communications Act 2003 (the “Act”), because it is satisfied that Cloud M has, in the respects notified, been in contravention of General Condition 18 (“GC18”) of the General Conditions of Entitlement, as specified in a notification under section 96A of the Act. This confirmation decision is at Annex 1 (the “96C Confirmation Decision”); and
 - b) section 139A of the Act, because it is satisfied that Cloud M has, in the respects notified, been in contravention of requirements under section 135 of the Act, as specified in a notification under section 138 of the Act. This confirmation decision is at Annex 2 (the “139A Confirmation Decision”).

Contravention of GC18

- 1.2 Number Portability is an important tool that enables customers (known as “Subscribers” in this context) to retain their telephone number(s) when they switch Communications Providers (“CPs”). The purpose of this mechanism is to foster customer choice by enabling Subscribers to move between CPs without the cost or inconvenience of changing their telephone number(s), thereby facilitating effective competition between providers.
- 1.3 GC18¹ sets out the requirements that CPs must meet when dealing with number porting requests, including providing Number Portability within the shortest time possible and paying compensation if the porting process is abused or delayed. These requirements ensure that Subscribers can move freely between providers and take their number with them, which helps promote healthy competition in the market.
- 1.4 On 13 November 2017 Ofcom received a complaint from MF Telecom Services Limited (“MFTS”) that alleged Cloud M had blocked a porting request in relation to two of its customers, Wellington Engineering Company (“WEC”) and Wellington Tube Supplies (“WTS”) (collectively referred to as “Wellington”²), who wished to switch providers from Cloud M to MFTS and retain their telephone numbers, including 020 8581 0061, 020 8581 9434 and 020 8230 5708 (the “Numbers”).
- 1.5 We opened an investigation on 2 January 2018 to consider whether there was or had been a contravention of Cloud M’s obligations under GC18 (the “Investigation”) and gathered

¹ On 1 October 2018, after the period examined as part of this investigation, [revised General Conditions](#) came into force which include revised requirements in relation to Portability and Number Portability within Condition B3.

² Although separate legal entities, Wellington Engineering Company and Wellington Tube Supplies have the same person with significant control, [x], and their telephony arrangements were arranged together. We have therefore considered their porting requests together.

evidence and information from Cloud M, MFTS and the other parties involved to help achieve this end.

- 1.6 Having considered the information provided to us from all the parties, we concluded that we had reasonable grounds for believing that Cloud M had contravened, and was continuing to contravene, GC18 in various respects. We therefore issued Cloud M with a notification under section 96A of the Act, alongside a document setting out of reasons for that provisional decision. Cloud M had one month to make representations on the matters notified but elected not to do so. Accordingly, we are now satisfied that Cloud M contravened GC18 in the following respects.
- 1.7 During the period 10 November 2017 to 17 September 2018 (the “Relevant Period”), we consider that Cloud M failed to provide Portability of the Numbers to MFTS as soon as reasonably practicable, in breach of GC18.5, and additionally failed to provide Number Portability to Wellington within the shortest time possible, in breach of GC18.1.³
- 1.8 We have reached this view having concluded that Cloud M, notwithstanding being in receipt of all necessary information, rejected the porting request in relation to the Numbers during the Relevant Period on three occasions, directly leading to Wellington being unable to exercise their entitlement to keep the Numbers when choosing to switch from Cloud M to MFTS.
- 1.9 In addition, for the period between 3 December 2017 and 17 September 2018, we consider that Cloud M contravened GC18.9 by failing to pay reasonable compensation to Wellington for what we consider to be an abuse of the porting process.
- 1.10 Finally, we have concluded that Cloud M contravened GC18.10 by not providing Wellington with clear, comprehensive and easily accessible information regarding how to access such compensation, as is required under its regulatory obligations. We consider this contravention to have been ongoing between 9 May 2013, the outset of Wellington and Cloud M’s contractual relationship, and 17 September 2018.
- 1.11 We explain our factual findings and our assessment of them against the legal framework in more detail in sections 4 and 5 below.

Financial penalty and other required actions

- 1.12 When Ofcom identifies a breach of a General Condition we may impose a financial penalty where we consider it appropriate and proportionate to do so.
- 1.13 In this case, Ofcom has decided to impose a penalty of £50,000 on Cloud M in respect of its contraventions of GC18. Ofcom’s view is that this penalty is appropriate and proportionate, reflects the seriousness of the contraventions, and deters further breaches of the General

³ The definitions of ‘Portability’ and ‘Number Portability’ can be found in General Condition 18, which can be found here: https://www.ofcom.org.uk/data/assets/pdf_file/0031/85972/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015.pdf.

Conditions by Cloud M and other CPs. In taking this view, we have had regard to all the evidence referred to in this document and Ofcom's published Penalty Guidelines.⁴

- 1.14 Ofcom has also decided to direct Cloud M to:
- i) take all necessary steps, in line with the industry agreed processes, to enable the complete porting of the Numbers to MFTS within one week of the date of the 96C Confirmation Decision; and
 - ii) pay reasonable compensation of £1,000 to Wellington in light of what we consider to be Cloud M's abuse of the porting process, within two weeks of the date of the 96C Confirmation Decision.

Contravention of requirements imposed under section 135 of the Act

- 1.15 During this investigation, we attempted to obtain information from Cloud M to help us assess its compliance with GC18. However, we have found that Cloud M:
- a) failed to respond in full to a first statutory information request;
 - b) failed to respond to a second statutory information request within the stipulated timeframe; and
 - c) failed to respond to a third statutory information request at all.

Consequently, we issued Cloud M with a notification under section 138 of the Act. Cloud M had one month to make representations on the matters notified but elected not to do so. Accordingly, we are now satisfied that Cloud M has, in the respect notified, been in contravention of requirements imposed in three statutory information requests issued under section 135 of the Act. Our reasons for this are explained in full in Section 7.

Financial penalty and other required actions

- 1.16 When Ofcom identifies a breach of a requirement imposed under section 135 of the Act we may impose a financial penalty where we consider it appropriate and proportionate to do so.
- 1.17 In this case, Ofcom has decided to impose a penalty of £5,000 on Cloud M in respect of its contraventions of requirements imposed under section 135 of the Act and a daily penalty of £100 per day (capped at £3,000) until the contravention of the Third Notice is remedied. Ofcom's view is that this penalty is appropriate and proportionate, reflects the seriousness of the contraventions, and deters further breaches of requirements imposed under section 135 of the Act by Cloud M and other CPs. In taking this view, we have had regard to the evidence referred to in this document and Ofcom's published Penalty Guidelines.

⁴ Ofcom, *Penalty Guidelines: section 392 Communications Act 2003*, 14 September 2017, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf.

2. Regulatory framework

- 2.1 These confirmation decisions follow an investigation into Cloud M's compliance with GC18, which creates obligations relating to the porting of telephone numbers, which is known as Number Portability and Portability.⁵ In this section we briefly describe these, set out the relevant regulatory obligations that apply to CPs in relation to their provision, and summarise Ofcom's investigative and enforcement powers in relation to GC18.
- 2.2 Additionally, we outline below Ofcom's information gathering powers under section 135 of the Act that were used in the course of this investigation, and the investigative and enforcement powers associated with them.

Porting telephone numbers

- 2.3 Number Portability is the facility that allows customers to change providers whilst keeping their telephone number(s). Keeping the same telephone number can be an important consideration for many customers when thinking about switching providers, as changing telephone numbers is likely to be inconvenient, time-consuming and potentially costly. It is particularly important for businesses to maintain consistency in their telephone numbers, to ensure their current and potential customers can contact them with ease, and to avoid changing stationery and other marketing materials.
- 2.4 Number Portability is therefore an important mechanism in ensuring effective retail competition in the telecoms sector. It promotes customer choice and reduces barriers to switching providers by taking away any unnecessary inconvenience and cost in changing telephone numbers. Given this, it is crucial that the process for porting numbers is easy, reliable and convenient. GC18 places obligations on CPs in order to safeguard this and we explain the condition below.⁶

General Condition 18

- 2.5 The General Conditions of Entitlement impose specific obligations on CPs offering Public Electronic Communications Services, including in relation to the porting of telephone numbers. GC18 sets out CPs' obligations in relation to Number Portability and Portability.

⁵ Number Portability refers to the facility provided to Subscribers to port telephone numbers, whereas Portability refers to the facility provided by one CP to another to enable Subscribers to port telephone numbers. As already noted, [revised General Conditions](#) came into force on 1 October 2018, which include revised requirements in relation to Portability and Number Portability within Condition B3.

⁶ Also see: Ofcom, *Review of General Condition 18 – Number Portability – Consultation*, 16 November 2006, https://www.ofcom.org.uk/data/assets/pdf_file/0030/28767/gc18r.pdf, paragraphs 2.1-2.4; Ofcom, *Porting charges under General Condition 18: Consultation document – Consultation*, 24 March 2014, https://www.ofcom.org.uk/data/assets/pdf_file/0025/83770/porting_charges_under_general_condition_18.pdf, paragraph 2.2.

2.6 GC18 implements Article 30 of the Universal Service Directive⁷ and reflects changes introduced in 2011⁸ as a result of the revised EU framework. The version of GC18 that is relevant for the purposes of our Investigation is set out in Ofcom's Consolidated Version of the General Conditions dated 28 May 2015.⁹

2.7 GC18 requires CPs to provide Number Portability and Portability, as well as placing obligations on CPs in respect of the terms and conditions on which it is offered, the speed such requests should be dealt with, the processes to be followed and the compensation paid in the event of delays or abuse. The relevant provisions of GC18 for the purposes of this case are:

"18.1 The Communications Provider shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges, to any of its Subscribers who so request.

[...]

18.5 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms...

[...]

18.9 Where Communications Providers delay the porting of a Telephone Number for more than one business day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.

18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers can access the compensation provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber."

2.8 GC18.11(b) defines a "Communications Provider" as "a person who provides an Electronic Communications Network or an Electronic Communications Service".

2.9 A "Subscriber" is defined in GC18.11(n) as "any person with a number or numbers from the National Telephone Numbering Plan who is party to a contract with the provider of Public Electronic Communications Services for the supply of such services in the United Kingdom."¹⁰

⁷ Member States are required to ensure the provision of number portability to subscribers pursuant to Article 30 of the Universal Services Directive (2002/22/EU) as amended by Directive 2009/136/EC.

⁸ *Changes to General Conditions and Universal Service Conditions: implementing the revised EU Framework*, 23 May 2011: <http://stakeholders.ofcom.org.uk/consultations/gc-usc/statement>

⁹ Consolidated Version of General Conditions as at 28 May 2015:

https://www.ofcom.org.uk/_data/assets/pdf_file/0031/85972/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_28_MAY_2015.pdf

¹⁰ Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement, 25 May 2011, inserted references to 'numbers in the National Telephone Numbering Plan' and 'Public Electronic Communications Services' (Notification published on 9 July 2012). See:

<http://stakeholders.ofcom.org.uk/consultations/gc-usc/statement>

- 2.10 GC18.11(h) sets out the definition of “Number Portability” as “*a facility whereby Subscribers who so request can retain their Telephone Number on a Public Communications Network, independently of the person providing the service at the Network Termination Point of a Subscriber provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan*”.
- 2.11 In addition, “Portability” is defined at GC18.11(k) as “*any facility which may be provided by a Communications Provider to another Communications Provider enabling any Subscriber who requests Number Portability to continue to be provided with any Public Electronic Communications Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service*”.

Ofcom’s investigation and enforcement powers

- 2.12 Sections 96A to 96C of the Act set out Ofcom’s enforcement powers in cases where we determine there are reasonable grounds for believing that a person is contravening or has contravened a General Condition of Entitlement.¹¹
- 2.13 Section 96A of the Act (Notification of contravention of condition other than SMP apparatus condition) states inter alia that:

“(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a condition (other than an SMP apparatus condition) set under section 45, they may give that person a notification under this section.

(2) A notification under this section is one which—

- (a) sets out the determination made by OFCOM;*
- (b) specifies the condition and contravention in respect of which that determination has been made;*
- (c) specifies the period during which the person notified has an opportunity to make representations;*
- (d) specifies the steps that OFCOM think should be taken by the person in order to—*
 - (i) comply with the condition;*
 - (ii) remedy the consequences of the contravention;*
- (e) specifies any penalty which OFCOM are minded to impose in accordance with section 96B;*
- (f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 100; and*
- (g) where the contravention relates to a condition set under sections 87 to 91, specifies any direction which OFCOM are minded to give under section 100A.*

(3) A notification under this section—

- (a) may be given in respect of more than one contravention; and*

¹¹ These sections do not apply in relation to contraventions which occurred before 26 May 2011.

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.”

2.14 Section 96B of the Act specifies the penalties that may apply for contravention of conditions where a person is given a notification under section 96A. Among other things, it states:

“(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

2.15 Section 96C of the Act applies where a person has been given a notification under section 96A, Ofcom has allowed the opportunity for representations to be made about the matters notified, and the period allowed for the making of representations has expired.

2.16 Section 96C(2) allows Ofcom to:

“(a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 96A; or

(b) inform the person that they are satisfied with the person's representations and that no further action will be taken.”

2.17 Under section 96C(3), Ofcom may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 96A.

2.18 Section 96C(4) provides that a confirmation decision must be given without delay, include the reasons for the decision, may require immediate action by the relevant person, and may require the person to pay the penalty specified in the section 96A notification or such lesser penalty that Ofcom considers to be appropriate in light of representations made or steps taken by the relevant person. The confirmation decision may also specify the period within which the penalty is to be paid.

Section 135 information gathering powers

2.19 Ofcom has statutory powers, contained in section 135 of the Act, to require the provision of information that it considers necessary for the purpose of carrying out certain functions.

2.20 These statutory powers are very important to Ofcom’s ability to carry out its statutory functions in relation to communications matters, such as conducting market reviews, imposing regulatory obligations, resolving disputes and taking enforcement action. They enable Ofcom to gather the information which it considers necessary to carry out its functions in a timely and effective manner.

2.21 Section 135 of the Act states that:

“Ofcom may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their functions under this Chapter”.

2.22 Section 135(2) of the Act states that “a communications provider” falls within the scope of this provision, which is defined in section 405(1) of the Act as:

“a person who provides...an electronic communications network or an electronic communications service.”

2.23 Section 135(3) of the Act confirms that the information that may be required by Ofcom under section 135 of the Act includes information that they require for, amongst other things, any one or more of the following purposes:

“(a) ascertaining whether a contravention of a condition or other requirement set or imposed by or under [Chapter 1 of the Act] has occurred or is occurring”.

2.24 Section 135(4) of the Act states that a person required to provide information under section 135 must provide it in such manner and within such reasonable period as may be specified by Ofcom.

2.25 Section 135(5) of the Act provides that the powers in section 135 are subject to the limitations in section 137. Section 137(3) provides that Ofcom are not to require the provision of information under section 135 except:

- i) by a demand for the information that describes the required information and sets out Ofcom's reasons for requiring it; and
- ii) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of Ofcom's functions.

Ofcom’s investigation and enforcement powers

2.26 Sections 138 to 144 of the Act specify the enforcement powers that Ofcom has in relation to contraventions of information requirements. Section 138 of the Act (Notification of contravention of information requirements) states inter alia that:

“(1) Where Ofcom determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 135 or 136, they may give that person a notification under this section.

(2) A notification under this section is one which–

- (a) sets out the determination made by OFCOM;*
- (b) specifies the requirement and contravention in respect of which that determination has been made;*
- (c) specifies the period during which the person notified has an opportunity to make representations;*
- (d) specifies what the person must do in order to comply with the requirement;*
- (e) specifies any penalty that OFCOM are minded to impose in accordance with section 139; and*

(f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 140. [...]”.

- 2.27 Section 139 of the Act specifies the penalties that may apply for contravention of the information requirements where a person is given a notification under section 138.
- 2.28 Section 139A of the Act applies where a person has been given a notification under section 138, Ofcom has allowed the opportunity for representations about the matter to be made, and the period allowed for the making of representations has expired.
- 2.29 Section 139A(2) allows Ofcom to:
- “(a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 138; or*
(b) inform the person that they are satisfied with the person’s representations and that no further action will be taken.”
- 2.30 Under section 139A(3), Ofcom may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 138.
- 2.31 Section 139A(4) provides that a confirmation decision must be given without delay, include the reasons for the decision, may require immediate action by the relevant person, and may require the person to pay the penalty specified in the section 138 notification or such lesser penalty that Ofcom considers to be appropriate in light of representations made or steps taken by the CP. The confirmation decision may also specify the period within which the penalty is to be paid.

3. Background

- 3.1 Telephone numbers are a finite resource and as such are considered a critical national resource. It is in this context that the allocation, adoption and use of telephone numbers is regulated. Ofcom is responsible for the administration of telephone numbers in the UK, as part of its regulation of the communications sector under the framework established by the Act.
- 3.2 Ofcom allocates numbers to CPs so they can use those numbers to deliver services to their customers. Allocation, adoption or use of numbers do not bestow ownership to any CP or end-user. Although an end-user will not own numbers, they are entitled to keep the numbers when changing providers through the porting process and, in this section, we explain the process involved in the porting of numbers from one provider to another and describe the roles of the individual parties.¹²

The porting process

Industry guidance

- 3.3 GC18 obliges CPs to offer Number Portability. The Number Portability Industry Forum,¹³ with agreement by the industry, has detailed the process that it recommends should be followed for porting numbers. It is a process that adapts with changing circumstances, and the agreed process applicable during the Relevant Period is set out in version 17.5.3 of the Geographic Number Portability End to End Process Manual (the “Manual”¹⁴).
- 3.4 Complementing this are the Industry Best Practice Guide – Consumer Switching (Fixed Line Voice & Broadband Services)¹⁵ and the Industry Guide to Cancel Other,¹⁶ both produced by the Office of the Telecommunications Adjudicator, an independent organisation tasked by Ofcom to oversee co-operation between CPs and enable a competitive environment in the telecommunications sector.
- 3.5 These are industry generated and industry approved documents. We refer to them here as a helpful aid to understanding the process only.

¹² See Ofcom, *Notification under Section 94 of the Communications Act 2003 of Contravention of General Condition 18: Notice served on Media, Marketing & Promotions (“MMP”) by the Office of Communications (“Ofcom”),* 26 August 2005, http://webarchive.nationalarchives.gov.uk/20140704035113/http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_830/cw_830notice.pdf, paragraphs 57 to 66.

¹³ The Number Portability Industry Forum is an industry group, chaired by a representative of the Office of the Telecommunications Adjudicator, comprised of representatives of individual CPs and associations of CPs who provide services using geographic and non-geographic telephone numbers which may be subject to porting.

¹⁴ NP Industry Forum, *Geographic Number Portability (GNP) End to End Process Manual, Operational Process,* Version 17.5.3, 12 February 2018, <http://www.offta.org.uk/files/GNPE2E-Ops%20process-v17.5.3.pdf>.

¹⁵ Office of the Telecommunications Adjudicator, *Industry Best Practice Guide Consumer Switching (Fixed Line Voice & Broadband Services),* 18 July 2017, <http://www.offta.org.uk/files/Industry%20BPG-Consumer%20Switching.pdf>

¹⁶ Office of the Telecommunications Adjudicator, *Industry Guide to Cancel Other, Issue V9.1,* 18 September 2015, http://www.offta.org.uk/cancel-other/Industry%20Guide%20to%20Cancel%20Other_V9.1.pdf

The parties involved

3.6 There are several parties involved in a single port and the exact number of parties will often vary. Their roles are described below.¹⁷

- The **Subscriber** is the end-user (a residential or business customer) who at the outset of the process wishes to port their number(s), i.e. to move telecoms provider while keeping their telephone number(s).
- The **Losing Provider, referred to as the Donor Provider in GC18**, is the provider who currently supplies the end-user with a telephone service at the outset of the porting process and from whom the end-user wishes to move. They are called a losing party because they are losing their customer.
- **Communications Network Providers (“CNPs”)** are the parties that own the networks that carry the telephone services.
- The **Losing CNP** is the party whose network carries the telephone service provided to the end-user by the Losing Provider at the outset of the process. As above, they are called a losing party because they are losing their customer.
- The **Gaining Provider, referred to as the Recipient Provider in GC18**, is the provider to whom the end-user wishes to move with their number(s) at the outset of the porting process. They are called a gaining party because they are gaining a customer.
- The **Gaining CNP** is the party whose network carries the telephone service provided to the end-user by the Gaining Provider at the conclusion of the porting process. As above, they are called a gaining party because they are gaining a customer and the number(s).
- The **Range Holder** is the party that has been allocated the range of telephone numbers (i.e. a block of 1,000 or more telephone numbers to use) by Ofcom that includes the end-user’s number(s).
- **Resellers** are parties that supply telephone services to customers (end-users) or other Resellers but are not CNPs. This means that they purchase the services from a wholesale supplier and resell them.

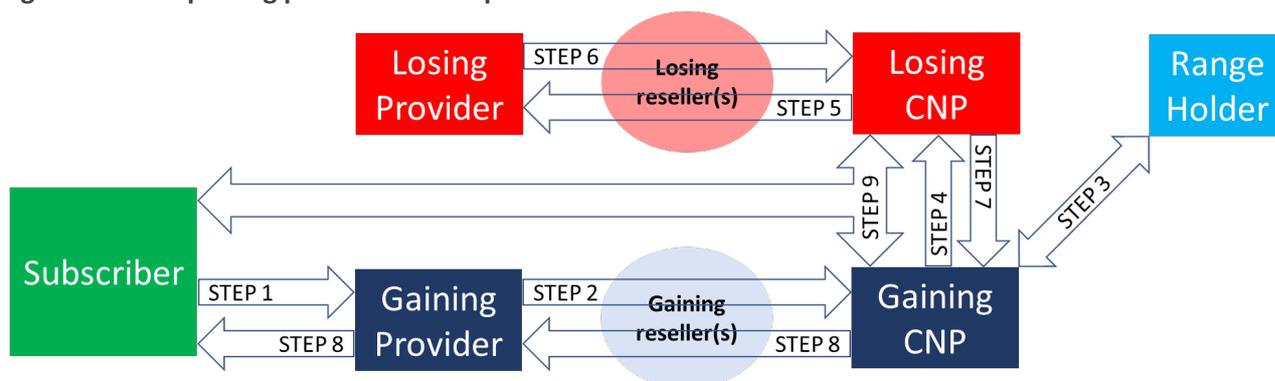
3.7 Other points to note regarding the parties involved:

- There is only one Range Holder involved in every port.
- The number of Resellers involved can vary from zero to two or more, depending on the supply chain. They will always sit between the CNPs and the end-user.

¹⁷ The terms used here are used here to help clarify the process and consequently may differ from the definitions given in GC18. Where this is the case, the definitions given in GC18 are determinative.

The steps of the porting process

Figure 3.1: The porting process and the parties involved



3.8 The steps of the industry recommended porting process set out in the Manual are as follows:

- Step 1: The Subscriber agrees to receive a telephone service from the Gaining Provider and completes a Customer Letter of Authority (“CLOA”), authorising the Gaining CNP to work on behalf of the Subscriber with the Losing CNP to port its number(s) to the new service provided by the Gaining Provider.
- Step 2: The Gaining Provider forwards the CLOA to the Gaining CNP. If there are Resellers between the Gaining Provider and the Gaining CNP, the CLOA will be passed along the chain.
- Step 3: Upon receipt of a completed CLOA, the Gaining CNP consults the Ofcom database to determine the Range Holder for the number(s), then sends a completed Network Port Order Form (“NPOR”) and the CLOA to the Range Holder. The NPOR contains details related to the porting request, including the number(s) to be ported, the preferred date and time for the port, and the identities of the Range Holder and the losing and gaining CNPs.¹⁸ This is done on the assumption that the Range Holder is also the Losing CNP. If the Range Holder is also the Losing CNP, it will confirm that and proceed to Step 5.¹⁹
- Step 4: If it is not the Losing CNP, the Range Holder will reply to the Gaining CNP with the details of the Losing CNP. The Gaining CNP amends the NPOR with the correct details of the Losing CNP and sends the NPOR (and possibly the CLOA²⁰) to the Losing CNP, requesting the port.²¹

¹⁸ See the Manual, 11.2 - Order Presentation, and Appendices B and C.

¹⁹ This is known as a Provide Order – see the Manual, 11.3.1 – Main Order Types, Provide Order (PRO)

²⁰ It is not necessary for the CLOA to be sent to the Losing CNP. The Gaining CNP should indicate on the NPOR whether the Losing CNP has received the CLOA. If required, the Losing CNP may request that the CLOA be sent to it.

²¹ This is known as a Subsequent Port (SUP) order - see the Manual, 11.3.1 – Main Order Types, Subsequent Port (SUP) and 11.8.2 – Order Process for Subsequent Portability.

- Step 5: The Losing CNP sends the request along the supply chain, via any Resellers, to the Losing Provider, requesting that it validate the order. This requires the Losing Provider to either accept or reject the order based only on the information supplied in the porting order.²²
- Step 6: The Losing Provider sends its response back along the supply chain to the Losing CNP, either accepting or rejecting the port along with the appropriate rejection code. The Manual provides for the Losing Provider to reject a porting request if it has a valid rejection reason, of which a comprehensive (although not necessarily exhaustive) list is contained in the Manual. Under this process, in the event that a port request is rejected, the rejection must be accompanied with a code representing the reason for the rejection.²³
- Step 7: If the port is:
- (a) accepted or a response isn't received from the Losing Provider (within 24 hours for single line orders or two working days for multi-line orders), the Losing CNP will accept the port request and send an 'acceptance' back to the Gaining CNP confirming the date and time at which the port will occur (the "port activation time").
 - (b) rejected, the Losing CNP has 48 hours within which to notify the Gaining CNP.
- Step 8: Whether the port is accepted or rejected by the Losing Provider, the Gaining CNP will notify the Gaining Provider who in turn will inform the Subscriber of the outcome and, if the port has been rejected, of the reasons given.
- Step 9: If the port is accepted, at the port activation time the Losing CNP will terminate the service it is providing to the Subscriber, the Range Holder will complete any necessary technical changes necessary for the port, and the Gaining CNP will activate the number(s) being ported to the service it is now providing to the Subscriber. The Subscriber will then begin receiving calls to the number(s) ported on the service provided by the Gaining Provider.²⁴

²² See the Manual, 11.4 – Order Validation.

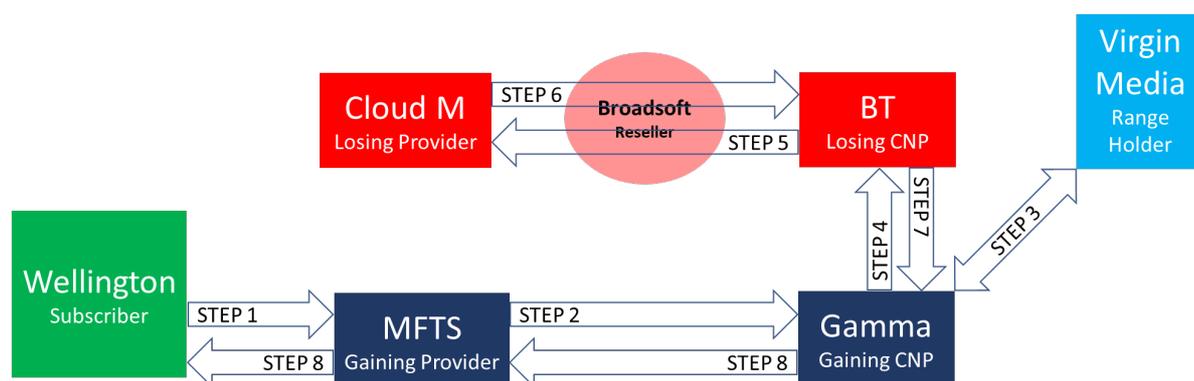
²³ See the Manual, 11.4 – Order Validation and 11.5 – Order Rejection.

²⁴ See the Manual, 11.7 – Porting Activation and 11.8.3 – Activation.

4. Factual conclusions

4.1 In this section, we explain the background to the Investigation and set out the relevant evidence on which we base our factual conclusions. This evidence was provided in response to requests for information made under section 135 of the Act from the relevant parties, namely Cloud M, Broadsoft, BT, Virgin Media, Gamma, MFTS and Wellington, whose roles in the porting process are set out in Figure 4.1 below. Based on the facts as set out below, section 5 sets out our conclusions about Cloud M's compliance with GC18.

Figure 4.1: The porting process and the parties involved in the Relevant Porting Request



Background to our investigation

- 4.2 Ofcom received a complaint from MFTS on 13 November 2017 (the “MFTS Complaint”), alleging that Cloud M had blocked requests by Wellington to port the Numbers, namely 020 8581 0061, 020 8581 9434 and 020 8230 5708, from Cloud M to MFTS.
- 4.3 MFTS explained that they had raised a porting request with Gamma to facilitate Wellington’s move from Cloud M to MFTS, but this was subsequently rejected by Cloud M. MFTS had since not been able to resolve the matter with Cloud M.
- 4.4 As we take compliance with GC18 very seriously we considered it was appropriate to take action to determine if there are reasonable grounds for believing that Cloud M is contravening or had contravened GC18. Ofcom opened a formal investigation into Cloud M’s compliance with GC18 on 2 January 2018.
- 4.5 As the complaint by MFTS only concerned the request initiated by Wellington on 23 October 2017 to port the Numbers from Cloud M to MFTS (the “Relevant Porting Request”), we decided to limit the scope of our investigation to this porting request and the events that followed it.

Relevant evidence gathered

- 4.6 In this sub-section we set out the evidence we have gathered that we consider relevant to the matter under investigation and from which we derive our factual conclusions.

Relevant events prior to the Relevant Porting Request

4.7 The MFTS Complaint related to the Relevant Porting Request, which was initiated by Wellington on 23 October 2017. For this reason, the events outlined below in this sub-section were not within the scope of the Investigation and Ofcom does not make any findings that Cloud M contravened GC18 in respect of the events and actions prior to that date. However, Cloud M's actions in this period preceding 23 October 2017 provide relevant context to the conduct under investigation, so in this sub-section we summarise the evidence in our possession relating to the period prior to the Relevant Porting Request.

4.8 Virgin Media has been the Range Holder for the Numbers²⁵ since at least 2009 and until mid-2013 provided telephony services to Wellington using the Numbers.²⁶

4.9 On 9 May 2013 Wellington contracted with Cloud M²⁷ for, among other things, the following services (the "Hosted Services Contracts").²⁸

- The Hosted Services Contract between Cloud M and WEC listed the following services:

"Telephony User Requirements

- CloudM SIP Trunk Licence QTY 5

Connectivity Requirements

- CloudM Standard ADSL+2 QTY 1
- CloudM Standard Line Rental QTY 1

Number Management

- Port Existing Numbers Yes"

- The Hosted Services Contract between Cloud M and WTS listed the following:

"Telephony User Requirements

- CloudM SIP Trunk Licence QTY 3

Connectivity Requirements

- CloudM Standard ADSL+2 QTY 1
- CloudM Standard Line Rental QTY 1

Number Management

- Port Existing Numbers Yes"

²⁵ See <http://static.ofcom.org.uk/static/numbering/sabcde2.xlsx>.

²⁶ The final invoice was issued by Virgin Media for the number ending 5708 on 4 June 2013 (Document 001 of the Evidence Bundle), and another for numbers ending 9434 and 0061 on 12 July 2013 (Document 002 of the Evidence Bundle).

²⁷ Then Cloud M Solutions Ltd, company number 08076663.

²⁸ (1) Cloud M Hosted Services Contract, Contract Number WEC/635294/1, dated 7 May 2013, signed by [x] for WEC on 9 May 2013 (Document 003 of the Evidence Bundle); (2) Cloud M Hosted Service Contract, Contract Number WTS/635294/2, dated 7 May 2013, signed by [x] for WTS on 9 May 2013 (Document 004 of the Evidence Bundle).

- 4.10 The Hosted Services Contracts give the addresses for WEC and WTS as Unit 1, Betam Road, Hayes, Middlesex, UB3 1SR, and the telephone number 020 8581 0061.
- 4.11 In response to an information request, alongside the Hosted Services Contracts, Wellington provided a copy of the terms and conditions that were purportedly supplied by Cloud M with the Hosted Services Contracts (the “Cloud M Terms and Conditions (Dec 2012)”).²⁹ Within them was the following term:
- “4.4.2 CLOUDM reserve the right to charge up to £10,000 per number ported away for [sic] their service.”*
- We note that Cloud M disputes the authenticity of the Cloud M Terms and Conditions (Dec 2012); this is discussed at paragraphs 4.52 to 4.64.
- 4.12 On the same date Wellington provided Cloud M with two CLOAs for the Numbers, one on behalf of WEC for the numbers ending 0061 and 9434 and the other on behalf of WTS for the number ending 5708.³⁰ The Numbers were ported from Virgin Media (the Losing CNP on this occasion) to BT (the Gaining CNP on this occasion) between November 2013 and April 2014.³¹
- 4.13 Evidence provided by Wellington suggests that in March 2017 the Numbers remained in use by Wellington for services provided by Cloud M and were used by Wellington in the following ways:
- 020 8581 0061 was WEC’s main number;
 - 020 8230 5708 was WTS’s main number; and
 - 020 8581 9434 was the direct number for an individual employee.³²

The porting requests in July and August 2017

- 4.14 In July and August 2017 Broadsoft notified Cloud M of three porting requests it had received, each one for all three of the Numbers – on 3 July, 26 July and 9 August – via the HIPCOM Ticketing system, a messaging system used by Cloud M³³ and Broadsoft to communicate.³⁴ Cloud M responded on 18 August 2017 as follows:

“Please cancel all these export requests as they have not been requested by the end user and they are very concerned that they will lose their numbers.

²⁹ Document 005 of the Evidence Bundle.

³⁰ Documents 006 and 007 of the Evidence Bundle.

³¹ Response from Virgin Media to the information request dated 25 April 2018, provided to Ofcom on 10 May 2018 (“Virgin Media Response”), Q1 (Document 008 of the Evidence Bundle).

³² See the spreadsheet produced by Cloud M following the number audit of Wellington’s telephone numbers in March 2017. The covering email and spreadsheet are Document 010 of the Evidence Bundle.

³³ Messages posted by ‘Breeze 8 – support@cloudmsolutions.co.uk’ are those from Cloud M.

³⁴ Messages on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by [x] of Broadsoft at 10:55 on 3 July 2017, 11:06 on 26 July and 10:24 on 9 August 2017 (Document 011 of the Evidence Bundle, p26).

Please can you cancel these urgently and confirm they will will [sic] not be exported.”³⁵

- 4.15 It is alleged that charges were sought to be imposed in respect of the porting requests. Wellington has provided us with an invoice (invoice #10896, dated 18 August 2017) (the “August Invoice”), which it submits was issued to it by Cloud M.³⁶ This invoice was for a total of £35,345.10 and included the following items:

“2 x CloudM Porting Charge – Total: £20,000”

Wellington has not paid this invoice.³⁷

- 4.16 We note that Cloud M disputes the authenticity of the August Invoice. We discuss this at paragraphs 4.52 to 4.64.

- 4.17 In an email dated 24 August 2017 provided by Wellington in response to our information request, Cloud M emailed Wellington demanding payment of the August Invoice.³⁸ The email read (EMPHASIS as in original, **emphasis** added):

“Please could you forward me [X]’s mobile number (as we do not have anyone’s apart from yours) as our accounts need to speak to her URGENTLY. The reason for this is we have not received payment for final invoice 10896 for £35,345.10 and this is day four of no phones or internet, and no communication has been received. Therefore it’s our clear belief that you have no intention of paying this invoice.

THEREFORE IF THIS INVOICE IS NOT PAID IN FULL CLEARED FUNDS BY 12pm NOON TODAY. THESE NUMBERS WILL BE CEASED AND REMOVED. THIS MEANS REMOVED PERMANENTLY FROM BT NETWORK & ALL INTERCONNECTS AND WILL NOT [sic] AVAILABLE FOR FUTURE USE.

*This is another unfortunate situation has arisen because of actions of your team who in the past **tried 4 times to port numbers that are under contract. Which we rejected and is also breach of contract.** To be fair you are probably trying it again. **However porting of numbers on/off our platform needs our authorisation which are monitored and by [sic] will be always rejected by us with outstanding balances.***

PLEASE PAY THIS INVOICE BEFORE 12pm NOON AS WE HAVE NO PLEASURE IN PERMANENTLY REMOVING CUSTOMER NUMBERS THAT THEY HAVE USED TO BUILD THERE [sic] BUSINESS WITH”

- 4.18 On 26 August 2017, having chased Broadsoft repeatedly for confirmation of the cancellation of the port requests,³⁹ Cloud M sent the following message to Broadsoft on a

³⁵ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 - support@cloudmsolutions.co.uk at 17:12 on 18 August 2017 (Document 011 of the Evidence Bundle, p25-26).

³⁶ Document 012 of the Evidence Bundle.

³⁷ See Response from Wellington to the information requests dated 9 March 2018, provided to Ofcom on 21 March 2018 (“Wellington Response”), Q8 (Document 074 of the Evidence Bundle). The August Invoice was supplied in response to Q7, and Q8 asked: Please confirm whether you paid any of the bills, invoices or demands for payment provided in response to question 7 above and provide any evidence of payment.

³⁸ Email from [X] (Accounts Director, Cloud M) to [X] and [X] of Wellington at 07:33 on 24 August 2017 (Document 013 of the Evidence Bundle).

³⁹ Messages on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 - support@cloudmsolutions.co.uk at 15:20 on 21 Aug 2017, 20:58 on 22 August 2017 and 14:05 on 25 August 2017. (Document 011, p24-25)

page on the HIPCOM Ticketing system, a copy of which was provided by Broadsoft in response to our information request:⁴⁰

"I have had an update they do not want a port.

The company Wellington Engineering that currently have and use the numbers are in financial trouble that why they have not paid the bill. However they have now been purchased by another engineering company called [X].

And obviously a main part of the deal is [X] have these four number [sic] and they thought they had to port them to their provider to change the name of the legal owners from Wellington Engineering to [X].

However they want to continue our service however they also want to make sure legally the numbers are moved to them and registered with them and not with Wellington Engineering as that company will not exist soon."

4.19 On 29 September 2017 Broadsoft confirmed via a message on the same page on the HIPCOM Ticketing system that the port had been cancelled:⁴¹

"We can confirm this export has now been cancelled and will not go ahead as requested."

The facts surrounding the Relevant Porting Request – Attempt 1

4.20 On 23 October 2017, Wellington, in expectation of moving telephony suppliers from Cloud M to MFTS, provided MFTS with a CLOA for 28 numbers used by WEC and WTS, including the Numbers (the "Wellington CLOA") (Step 1).⁴²

4.21 The Wellington CLOA included the following under Customer Details:

*"Customer Name: Wellington Engineering Limited
Account Number: WEC/635294/1 + WTS/635294/2
Company's Registered Address: 1 Betam Road, Hayes, Middlesex, UB3 1SR
Company's Registered Number: 02688410"*

These details match those details registered with Companies House.⁴³

4.22 The Wellington CLOA noted that the form was being sent from Gamma to BT, meaning that:

a) MFTS was a reseller of Gamma services and the Gaining Provider;

⁴⁰ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 - support@cloudmsolutions.co.uk at 12:04 on 26 August 2017 (Document 011, p24).

⁴¹ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by [X] at 09:28 on 29 September 2017 (Document 011, p22).

⁴² Geographic Number Porting Letter of Authority, signed by [X] ([Wellington]) on 23 October 2017 (Document 014 of the Evidence Bundle).

⁴³ See <https://beta.companieshouse.gov.uk/company/02688410>. This address became WEC's Registered Office Address on 28 March 2014 (Document 016 of the Evidence Bundle).

- b) Gamma was the Gaining CNP; and
- c) BT was the Losing CNP.
- 4.23 The Wellington CLOA was passed by MFTS to Gamma on 1 November 2017⁴⁴ (Step 2). Gamma was already aware that BT was the losing CNP (missing out Step 3) so prepared the NPORs and sent them to BT on 2 November 2017,⁴⁵ who provisionally accepted the porting request on 3 November 2017⁴⁶ (Step 4). BT responded to Gamma with the Porting Order Validation information,⁴⁷ and passed the request onto Broadsoft on the same day (Step 5).⁴⁸ The automated notifications all stated the customer's postcode as UB3 1SR.
- 4.24 Broadsoft notified Cloud M of the porting request on 3 November 2017 (Step 5).⁴⁹ The message read as follows:

*"We have received the below email from the Export team:
An export request has been received to port the following Installations:
02085810061
[...]
02085819434
02082305708
Order Type RTA⁵⁰
Customer required by date and time is 13/11/17 19.45hrs
If order type is RTA the port will take place anytime between CRD⁵¹ and CRD + 7 working days
If order type is FIXED the port will take place on CRD as shown above
Any cancellation of transfer must be received by 10/11/17 14:00hrs."*⁵²

⁴⁴ Email from [redacted] of MFTS to portenquiries@gamma.co.uk at 13:04 on 1 November 2017 (Document 076 of the Evidence Bundle).

⁴⁵ See the three Number Port Order Forms (NPORs) for the Numbers, dated 2 November 2017 (Documents 017-019 of the Evidence Bundle).

⁴⁶ Ibid. The section entitled 'Communications Provider Response' lists Gamma's contact with BT and showed when BT received, acknowledged and accepted the porting request.

⁴⁷ Document 020 of the Evidence Bundle. This was subsequently passed from Gamma to MFTS to enable MFTS, as the Gaining Provider, to ensure the port is successful.

⁴⁸ Automated notifications of the requests sent by email from the BT Wholesale Number Portability Customer Management Centre to provisioning.uk@broadsoft.com on 3 November 2017 at 10:07, 10:08 and 10:11 (Documents 021-023 of the Evidence Bundle).

⁴⁹ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by [redacted] of Broadsoft at 11:43 on 3 November 2017 (Document 011, pages 19-20).

⁵⁰ This stands for Real Time Activation, which means that the port activation will be initiated in real time.

⁵¹ This stands for Customer Required Date.

⁵² We understand that the fact that Broadsoft's message to Cloud M only included four of the 28 numbers requested by Wellington for porting was an error on BT's part, as BT did not send Broadsoft notifications about Wellington's request to port the other 24 numbers. This resulted in the other 24 numbers being ported on 7 November 2017 – see email from [redacted] of BT Wholesale, IPEX Export to [redacted] of Broadsoft at 3:35 on 17 November 2017 (Document 073 of the Evidence Bundle). Additionally, we understand that the number 02085810062 was ported to MFTS at a later date, which is why the scope of our investigation is only the Numbers – see email from [redacted] of MFTS to Sheryl Willson of Ofcom at 16:01 on 17 November 2017 (Document 015 of the Evidence Bundle).

- 4.25 On 6 November 2017 at 13:14, Cloud M forwarded the above message dated 3 November 2017 to Wellington and asked it to confirm the new supplier's company name and a contact.⁵³ An extract of Cloud M's covering email, reads:

"We had a call last week from your new supplier [sic] for your phone system and we have received a number porting request to move over on the 13/11/17 19.45hrs. (please see below)

Therefore please can you confirm the new suppliers [sic] company name and a contact of a person our support team can contact before the 13/11/17 to ensure [sic] we have the require [sic] information to allow the switch to take place and ensure the switch to them goes smoothly.

Also since your phone system is currently [sic] suspended please could supply us with another contact number for yourself."

- 4.26 Wellington replied to this email at 14:08 on the same day, copying in MFTS, confirming the ports and asking them not to be stopped:⁵⁴

*"In response to your email below -
[redacted] @ MF Telecom Services Limited (Cc'd) will be Wellingtons [sic] new supplier.
I confirm the ports and they are not to be stopped."*

- 4.27 MFTS also replied to Cloud M at 14:13 on the same day, also asking for the ports not to be blocked (emphasis as in original):⁵⁵

*"We spoke last week. Details below if needed. Please do not block the ports.
There are still a messages [sic] on Wellengs numbers that has been put on by Cloud M,
please can these be removed ASAP. The OTA and FCS are aware of this.
To ensure the smooth number port please can you confirm who you are using for the
current SIP trunks and number hosting. I will then pass this info to the new carrier
(Gamma)."*

- 4.28 Between 12:31 and 16:12 on the same day, Cloud M exchanged messages on the HIPCOM Ticketing system with Broadsoft about which company details were on the porting request.

Cloud M – 12:31

"Can you confirm which company (name & address [sic]) these numbers belong to because there has been attempted fraud on these in the past."⁵⁶

Broadsoft – 14:37

"You can find customer details on the SPA and Business Portal.

⁵³ Email from [redacted] of Cloud M to [redacted] of Wellington (among others, including [redacted] of Wellington) at 13:14 on 6 November 2017 (Document 023 of the Evidence Bundle).

⁵⁴ Email from [redacted] of Wellington to [redacted] of Cloud M at 14:08 on 6 November 2017 (Document 024 of the Evidence Bundle)

⁵⁵ Email from [redacted] of MFTS to [redacted] of Cloud M at 14:13 on 6 November 2017.

⁵⁶ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 - support@cloudmsolutions.co.uk at 12:31 on 6 November 2017 (Document 011, page 19).

We can see these numbers are under the customer myconnectanywhere and site newbury1.”⁵⁷

Cloud M – 16:12

“Yes these that [sic] the correct company details please can you check before rejecting that these [sic] the company detail [sic] on the the [sic] porting request? I think it will be Wellington [sic] Engineering which is the incorrect company and do not own these numeber [sic].

Could you check what BT have on their records [sic] for these numbers is it Wellington Engineering or myconnectantwhere [sic] in Newbury which it should be.

Only just change [sic] so many be [sic] did not get updated [sic] on the bt [sic] tuesday [sic] update [sic].”⁵⁸

- 4.29 The following day, 7 November 2017, Broadsoft asked Cloud M to confirm whether it was “happy for this export to go ahead or require us to request this to be cancelled”⁵⁹. Cloud M responded to Broadsoft at 13:29 on 10 November 2017 with the following message, directly instructing Broadsoft to reject the porting request (Step 6):⁶⁰ (EMPHASIS as in original, **emphasis** added)

*“WE HAVE BOTH [sic] INFORMED BY THE OWNER OF THESE NUMBERS AND BT THAT THESE NUMBER THAT HAVE BEEN REQUESTED TO BE **PORTED MUST BE CANCELLED IMMEDIATELY FOR THE FOLLOWING REASONS:** FRAUD PORT NOT REQUESTED BY NUMBERS [sic] OWNERS*

1. Gaining provider Gamma have not received LOA from the owner of these numbers. (should have rejected by BT before getting to Hipcom)

2. FRAUD PORT: Incorrect company requesting ports number not owned by Wellington Engineering.

(should have rejected by BT before getting to Hipcom)

3. Owner of these numbers is the company Myconnectanywhere based in Newbury, Berkshire. NOT Wellington Engineering.

PLEASE CONFIRM PORT REJECTION ASAP”

- 4.30 This rejection was relayed by Broadsoft to BT later that day⁶¹ and BT confirmed that the porting request for the Numbers would not go ahead⁶² (Step 6). On the same day, Gamma

⁵⁷ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by [redacted] of Broadsoft at 14:37 on 6 November 2017 (Document 011 of the Evidence Bundle, page 19).

⁵⁸ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 - support@cloudmsolutions.co.uk at 16:12 on 6 November 2017 (Document 011 of the Evidence Bundle, page 19).

⁵⁹ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by [redacted] of Broadsoft at 09:01 on 7 November 2017 (Document 011 of the Evidence Bundle, page 19).

⁶⁰ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 - support@cloudmsolutions.co.uk at 13:29 on 10 November 2017 (Document 011 of the Evidence Bundle, page 19).

⁶¹ Emails from [redacted] of Broadsoft to wolverhamptonexport@bt.com on at 16:41 on 10 November 2017 (Documents 025-027 of the Evidence Bundle).

⁶² Emails from [redacted] (IP Voice Exchange Advisor – Export Team Wholesale and Ventures) to [redacted] of Broadsoft on 10 November 2017 at 16:32, 16:48 and 16:55 (Documents 025-027 of the Evidence Bundle).

received three Cancel Other forms rejecting the porting requests, all dated 10 November 2017 (Step 7)⁶³ and on 13 November 2017 MFTS received automated notifications from Gamma that the porting requests had been cancelled; the reason given was ‘LCP (losing CP) Cancellation’ (step 8).⁶⁴

- 4.31 Despite having rejected the porting request earlier that day, at 14:08 on 10 November 2017 Cloud M emailed Wellington:⁶⁵ (emphasis added)

*“Please can you ring me urgently regarding this fiasco as I would like get this sorted out and I feel before this issue we had a good working relationship and i [sic] am hopeful between us we can sort this out or at least we can discuss a realistic way forward and **the porting team will not release these number [sic] until we have a reasoned conversation** which is best for both parties and also before this escalates even further to a criminal matter.”*

The facts surrounding the Relevant Porting Request – Attempt 2

- 4.32 On 13 November 2017, BT informed Broadsoft that it had received from Gamma the CLOA for the Numbers and asked Broadsoft to authorise the port:⁶⁶ (emphasis added)

*“Below orders were cancelled from portal with reason “Gaining provider Gamma have not received LOA from the owner of these numbers” –
02082305708---Flow Orderline No-938788946.
02085819434---Flow Orderline No-938788945.
02085810061---Flow Orderline No-938788943
However **GCP Gamma has sent us the LOA for all numbers stating that current CP is blocking the number**. Please have a look in these orders and authorize to port. I have attached the LOA.”*

- 4.33 Below this message were copies of the emails exchanged between Cloud M and Wellington on 6 November 2017 (discussed above at paragraphs 4.24 - 4.25 and document 024) and 10 November 2017 (discussed above at paragraph 4.31 and document 035).

- 4.34 On 14 November 2017 Broadsoft notified Cloud M that it had received a new porting request for the Numbers:⁶⁷

*“We have received a new export request for the following numbers:
02085810061
02085819434*

⁶³ See Response from Gamma to the information request dated 24 April 2018, provided to Ofcom on 8 May 2018 (“Gamma Response”), Q3 (Document 028 of the Evidence Bundle). We assume that these were received from BT as the Losing CNP. These Cancel Other forms are documents 029-031 of the Evidence Bundle.

⁶⁴ Emails from Gamma Number Porting to [redacted] of MFTS on 13 November 2017 at 00:18, 00:26 and 00:27 (Documents 032-034 of the Evidence Bundle).

⁶⁵ Email from [redacted] of Cloud M to [redacted] of Wellington at 14:08 on 10 November 2017 (Document 035 of the Evidence Bundle).

⁶⁶ Email from [redacted] of BT Wholesale, IPEX Export to provisioning.uk@broadsoft.com at 17:04 on 13 November 2017 (Document 036 of the Evidence Bundle, page 1).

⁶⁷ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) from [redacted] of Broadsoft at 12:02 on 14 November 2017 (Document 011 of the Evidence Bundle, page 16).

02082305708

BT have been provided a Letter of Authority from the gaining provider and an invoice from CloudM showing the customer name and associated telephone numbers... Please let me know if you have a valid rejection reason by 14:00 today or the numbers will export to the gaining provider."

4.35 We consider this to be a second attempt to implement the Relevant Porting Request as it was triggered by BT with the Wellington CLOA, rather than a new CLOA.

4.36 Later that day Broadsoft sent a further message to Cloud M via the HIPCOM Ticketing system:⁶⁸

"Please see attached LOA and Invoice provided by our carrier. Please reply with a valid rejection reason as soon as possible. Apologies for the short amount of time allocated for a response, I did call you to allow some extra time to get to the bottom of this. BT have now said that Open Reach are awaiting an update as they have applied the port prefix for the gaining provider to the numbers but will not close it off until we provide a valid rejection reason. This means that the export has not gone ahead completely yet but there is currently a loss of service until we provide a valid rejection."

4.37 Broadsoft has confirmed⁶⁹ that the LOA referred to in the message is the Wellington CLOA, which, as noted above, included the following under Customer Details:

*"Customer Name: Wellington Engineering Limited
Account Number: WEC/635294/1 + WTS/635294/2
Company's Registered Address: 1 Betam Road, Hayes, Middlesex, UB3 1SR
Company's Registered Number: 02688410"*

4.38 Broadsoft has also confirmed⁷⁰ that the invoice mentioned was in fact two invoices (invoice #10834 issued to WEC and #10835 issued to WTS) supplied by Cloud M to Wellington, dated 1 February 2017 (the "February Invoices").⁷¹ These invoices do not mention the Numbers but show that Wellington was a customer of Cloud M.

4.39 Cloud M responded to Broadsoft that afternoon as follows:⁷² (EMPHASIS as in original, **emphasis** added)

*"Our lawyers and I looked at this and the same is said **this port is to be REJECTED** on the ground of the LOA that is attached yet again in the:
Wrong Company Name
Wrong Address*

⁶⁸ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) from [redacted] of Broadsoft at 14:57 on 14 November 2017 (Document 011 of the Evidence Bundle, page 15).

⁶⁹ See Document 082 of the Evidence Bundle.

⁷⁰ See Document 082 of the Evidence Bundle.

⁷¹ Document 075 of the Evidence Bundle.

⁷² Message on HIPCOM Ticketing system (Broadsoft/Cloud M) from Breeze 8 – support@cloudmsolutions.co.uk at 16:09 on 14 November 2017 (Document 011 of the Evidence Bundle, page 15).

Wrong Post Code

*For the avoidance of doubt the only person authorised to sign a LOA for these numbers is the current contract holder which is not on this LOA. **Therefore REJECTED.***

I see that you have this LOA in the name of an organisation that once used these. This invoice is just confirming that this company RENTED NUMBERS from us and NEVER OWNED ANY.

And again for the avoidance of doubt this organisation ONLY EVER RENTED NUMBERS from us and within our rental contract it clearly states that any organisation renting numbers from us have no ownership rights, and certainly in this case where no ownership would ever be available via their contract. Even contracts with ownership rights, forgo these rights once a single contract breach happens. In this companies [sic] case after month two for non-payment with termination earlier this year. And again for the avoidance of doubt these numbers were available for recycling/reissuing when they were and there was considerably more than 180 days between active contracts.”

- 4.40 This rejection was communicated by Broadsoft to BT later that day.⁷³
- 4.41 Following this message, it is alleged by Cloud M⁷⁴ that it terminated its contract with Wellington and recycled the numbers for use by another company. We discuss this at paragraphs 4.65 to 4.72.

The facts surrounding the Relevant Porting Request – Attempt 3

- 4.42 At 16:26 on 16 November 2017, Broadsoft notified Cloud M that it had received another porting request for the Numbers.⁷⁵ We consider this to be a third attempt to implement the Relevant Porting Request as Wellington only provided MFTS with one CLOA, the Wellington CLOA.⁷⁶
- 4.43 At 18:08 on the same day Cloud M responded by resending its message dated 14 November 2018 in response to the second attempt of the Relevant Porting Request, rejecting the porting request:⁷⁷ (emphasis added)

*“Our lawyers and I looked at this and the same is said **this port is to be REJECTED** on the ground of the LOA that is attached yet again in the:*

Wrong Company Name

Wrong Address

⁷³ Email from provisioning.uk@broadsoft.com to [×] of BT Wholesale, IPEX Export at 16:21 on 14 November 2017 (Document 036 of the Evidence Bundle, page 44).

⁷⁴ See Document 011 of the Evidence Bundle, specifically messages by Breeze 8 – support@cloudmsolutions.co.uk at 13:29 on 10 November 2017 (page 18) and at 16:09 on 14 November 2017 (page 15).

⁷⁵ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) from [×] of Broadsoft at 16:26 on 16 November 2017 (Document 011 of the Evidence Bundle, page 10).

⁷⁶ In MFTS’ response to the information request dated 24 April 2018, provided to Ofcom on 24 April 2018 (“MFTS Response”), MFTS only supplied the Wellington CLOA in response to the Q2, which read: ‘Provide copies of all porting requests(s) (including customer letter(s) of authorisation) received by MFTS from (i) Wellington Engineering and/or (ii) Wellington Tube in respect of porting the Numbers from Cloud M to MFTS, for the period 1st October 2017 to date.’

⁷⁷ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) from Breeze 8 – support@cloudmsolutions.co.uk at 18:08 on 16 November 2017 (Document 011 of the Evidence Bundle, page 10).

Wrong Post Code

*For the avoidance of doubt the only person authorised to sign a LOA for these numbers is the current contract holder which is not on this LOA. **Therefore REJECTED.***

- 4.44 This was relayed to BT on the following day⁷⁸ by Broadsoft and BT confirmed that the port had been cancelled later on 17 November 2017.⁷⁹
- 4.45 Before posting its rejection message, Cloud M issued Wellington with two final invoices, #10916 for WEC and #10917 for WTS, both dated 11 November 2017 (the “November Invoices”).⁸⁰ The invoices were attached to an email from Cloud M to Wellington sent at 14:58 on 16 November 2017 which read:⁸¹

"The current chaos has been caused by people trying to be clever and think they can just go around doing what they like, like taking something that is not theirs or thinking they can just forgot [sic] about serious financial commitments they have made and then dishonour them [sic] commitments.

Sorry the world we live at CloudM and dishonouring commitments does not happen. Therefore since BT and Ofcom [sic] have confirmed what we already knew.

We are now in a position to issue Wellington Engineering Company Limited and Wellington Tube Supplies Limited with their full and final invoices that are to be paid in full by 12pm tomorrow.

The total outstanding is £83,345.10 and if that final figure is paid into our bank in full and cleared funds.

[...]

We may be able to negotiate in the future. However if this is not received we will never again enter any negotiations with you. And the debt will past [sic] to our collections department for fully [sic] recovery."

- 4.46 Invoice #10916 to WEC was for a total of £45,104.10 and included the following items:

<i>Qty</i>	<i>Description</i>		<i>Total</i>
2	CloudM Porting Charge (02085810061 & 02085810062)	£10,000	£20,000
2	Contract – Porting Violation (Refer: Appendix 2 – Ownership)	£5,000	£10,000"

⁷⁸ Email from provisioning.uk@broadsoft.com to [redacted] of BT Wholesale, IPEX Export at 09:28 on 17 November 2017 (Document 037 in the Evidence Bundle).

⁷⁹ Email from [redacted] of BT Wholesale, IPEX Export to provisioning.uk@broadsoft.com at 14:50 on 17 November 2017 (Document 038 in the Evidence Bundle).

⁸⁰ Documents 042 and 043 of the Evidence Bundle.

⁸¹ Email from [redacted] of Cloud M to [redacted] of Wellington, among others, at 14:58 on 16 November 2017 (Document 044 of the Evidence Bundle).

4.47 Invoice #10917 to WTS was for a total of £38,241.00 and included the following items:

<i>Qty</i>	<i>Description</i>		<i>Total</i>
2	CloudM Porting Charge (02085819434 & 02082305708)	£10,000	£20,000
2	Contract – Porting Violation (Refer: Appendix 2 – Ownership)	£5,000	£10,000”

Wellington has not paid these invoices.⁸²

4.48 We note that Cloud M disputes the authenticity of the November Invoices. We discuss this below at paragraphs 4.52 to 4.64.

Wellington entered contract with MFTS

4.49 On 16 November 2017, Wellington entered into a contract with MFTS for, among other things, IP Telephony (the “Telecom Service Agreements” and the “MFTS Terms and Conditions”).⁸³ The address given for both WEC and WTS is: 1 Betam Road, Hayes, UB3 1SR.

Current status of the Numbers and compensation

4.50 We have been informed by Gamma that in the light of the ongoing dispute as to the porting of the Numbers and having been persuaded that the port requests should have been accepted, on 15 November 2017 it asked Virgin Media to act as if the porting request was accepted and port the Numbers on its systems, despite Cloud M’s rejections.⁸⁴ Virgin Media agreed to Gamma’s request⁸⁵ and we understand that this, along with Gamma making changes on its internal systems, effected a partial porting for the Numbers. From Wellington’s point of view, some calls to the Numbers come through to it as they should, via the service provided by MFTS. However, others are routed via BT to Cloud M and an answerphone not controlled by Wellington.⁸⁶ It is unclear why some calls are routed differently from others.

4.51 To date, Cloud M has not offered or paid Wellington any compensation for its actions in relation to this porting request.⁸⁷

⁸² See Wellington Response, Q8 (Document 074 of the Evidence Bundle). The November Invoices were supplied in response to Q7, and Q8 asked: Please confirm whether you paid any of the bills, invoices or demands for payment provided in response to question 7 above and provide any evidence of payment.

⁸³ (1) MFTS Telecom Service Agreement between WTS and MFTS, signed by [x<] on 16 November 2017 (Document 039 of the Evidence Bundle); (2) MFTS Telecom Service Agreement between WEC and MFTS, signed by [x<] on 16 November 2017 (Document 040 of the Evidence Bundle); (3) MF Telecom Service Terms and Conditions, V1, March 2017 (Document 041 of the Evidence Bundle).

⁸⁴ See Gamma Response, Q3 (Document 028 of the Evidence Bundle).

⁸⁵ See Virgin Media Response, Q2 and Q4 (Document 008 of the Evidence Bundle).

⁸⁶ Note of call between Menachem Grunewald of Ofcom and [x<] of MFTS at 15:20 on 25 June 2018 (Document 045 of the Evidence Bundle).

⁸⁷ See response from Cloud M the information request dated 8 March 2018 (“Cloud M First Response”), Q9 (Document 83 of the Evidence Bundle).

The authenticity of the August and November Invoices and the Cloud M Terms and Conditions (Dec 2012)

- 4.52 As noted above, during the course of the Investigation and in response to statutory information requests, Wellington provided copies of terms and conditions and invoices which it claims to have received from Cloud M. The terms and conditions included a term that a charge may be levied by Cloud M in the event that numbers were ported away from Cloud M's service. However, Cloud M maintains that these terms and conditions and any invoices purportedly issued by Cloud M relating to porting charges, including the August Invoice and the November Invoices, are not Cloud M generated documents (i.e. they are not genuine) as Cloud M does not charge for Number Portability services: '*customers that are subscribers can port their number in or out for free*'.⁸⁸
- 4.53 In a Cloud M internal email between [redacted], the CEO of Cloud M, and [redacted], the Accounts Director of Cloud M, into which Ofcom was copied, Cloud M stated:⁸⁹ (emphasis added)
- "Please can you explain to me fully these invoices 10916 & 10917 that have been kindly forwarded to me by Sheryl Wilson from Ofcom also the attached a [sic] document "Terms.pdf" which i [sic] believe they claim to be our invoices and T&C's [sic] which clearly they are not, even though the T&C's [sic] are in style of [sic] the time."*
- Ofcom has not been provided with a response to this email.
- 4.54 Regarding the August Invoice and the November Invoices, Cloud M stated that '*no invoices have been issues [sic] regarding these 3 numbers*'.⁹⁰ Cloud M submitted that its policy '*is and always will be that we [Cloud M] do not issue invoices until a minimum of 30 days after a [sic] export has been successfully completed*'.⁹¹
- 4.55 In considering Cloud M's submission, we have noted the evidence set out immediately below.

The Cloud M Terms and Conditions (Dec 2012)

- 4.56 The Cloud M Terms and Conditions (Dec 2012), which Wellington maintains were received and accepted in May 2013⁹² and which were provided to Ofcom by Wellington, are dated December 2012, five months before Wellington contracted with Cloud M for telephony services.

⁸⁸ Cloud M First Response, Q7 (Document 055 of the Evidence Bundle).

⁸⁹ Email from [redacted] of Cloud M to [redacted] of Cloud M at 19:06 on 5 December 2017 (Document 056 of the Evidence Bundle).

⁹⁰ Cloud M First Response, Q6 (Document 051 of the Evidence Bundle).

⁹¹ Also see email from [redacted] of Cloud M to Menachem Grunewald of Ofcom at 09:50 on 30 April 2018 (Document 052 of the Evidence Bundle).

⁹² The Cloud M Terms and Conditions (Dec 2012) were provided by Wellington in the Wellington Response in answer to Q1 which asked for 'copies of all available contracts or agreements between (i) Wellington Engineering and (ii) Cloud M and/or CloudM Solutions in relation to telecommunications services provided in respect of the Numbers (including full terms and conditions).'

- 4.57 Cloud M has not provided an alternative version of the terms and conditions accepted by Wellington, stating that: *'The contracts have already been supplied to you and they are signed at the bottom with the text clearly stating all the relevant details and the person is signing this contract and is happy to conform with our T&C's given to the customer at the same time as the law requires.'*⁹³
- 4.58 We believe that the contracts that Cloud M is referring to are the Hosted Services Contracts, which were provided to us by MFTS, Wellington and BT, and the text that Cloud M is referring to at the bottom of both Hosted Services Contracts reads as follows:
- "Authority
I hereby accept that I have read and agree to CloudM Solutions Terms and Conditions and Acceptable Usage Policy, sent to me and is available at <http://www.cloudmsolutions.co.uk> I understand that this is a 60-month service contract, all prices are subject to VAT and payments are charges monthly in advance."*
- As noted already, however, Cloud M did not provide us with such terms and conditions.
- 4.59 Cloud M was invited to provide subsequent versions of the terms and conditions accepted by Wellington, but did not provide any accepted versions, saying only that:
- "This is standard business as usual process any new revisions [to the Terms and Conditions] are done at the end of a month and a copy sent out with that monthly bill and they are advised of any changes, in this case the logo changed. customer sometimes email [sic] back and said thanks. However, from a legal point of view we have fulfilled our obligations."*
- While Cloud M did provide a recent version of its terms and conditions, dated 1 February 2017,⁹⁴ it did not provide any accompanying evidence to show that these terms and conditions were accepted by Wellington, or even sent to Wellington.

The August Invoice

- 4.60 The August Invoice was dated after Cloud M rejected three porting requests for the Numbers. It included a porting charge of £20,000. This invoice was followed up by an email from '[X]@CloudM.co.uk' on 24 August to at least four members of Wellington's staff. In this email [X] (Accounts Director, Cloud M) states: (EMPHASIS as in original, **emphasis added**)
- "Please could you forward me [X]'s mobile number (as we do not have anyone's apart from yours) as our accounts need to speak to her URGENTLY. **The reason for this is we have not received payment for final invoice 10896 for £35,345.10 and this is day four of no phones or internet, and no communication has been received. Therefore it's our clear belief that you have no intention of paying this invoice.**"*

⁹³ Response from Cloud M to the information request dated 26 April 2018, provided to Ofcom on 10 May 2018 ("Cloud M Second Response"), Q1 (Document 051 of the Evidence Bundle).

⁹⁴ Document 048 of the Evidence Bundle.

THEREFORE IF THIS INVOICE IS NOT PAID IN FULL CLEARED FUNDS BY 12pm NOON TODAY. THESE NUMBERS WILL BE CEASED AND REMOVED. THIS MEANS REMOVED PERMANENTLY FROM BT NETWORK & ALL INTERCONNECTS AND WILL NOT AVAILABLE FOR FUTURE USE.

This is another unfortunate situation has arisen because of actions of your team who in the past tried 4 times to port numbers that are under contract. Which we rejected and is also breach of contract. To be fair you are probably trying it again. However porting of numbers on/off our platform needs our authorisation which are monitored and by will be always rejected by us with outstanding balances.

PLEASE PAY THIS INVOICE BEFORE 12pm NOON AS WE HAVE NO PLEASURE IN PERMANENTLY REMOVING CUSTOMER NUMBERS THAT THEY HAVE USED TO BUILD THERE [sic] BUSINESS WITH:"

The November Invoices

4.61 The November Invoices were attached to an email dated 16 November 2017 sent by '[X]@CloudM.co.uk', in which [X] (Accounts Director, Cloud M) states:

"We [Cloud M] are now in a position to issue Wellington Engineering Company Limited and Wellington Tube Supplies Limited with their full and final invoices that are to be paid in full by 12pm tomorrow. The total outstanding is £83,345.10 and if [sic] that final figure is paid into our bank in full and cleared funds."⁹⁵

Conclusions

4.62 We are persuaded by the emails from [X]@CloudM.co.uk that refer to/attach these invoices that the August and November Invoices are genuine and were provided by Cloud M to Wellington. Ofcom informed the parties that providing false information is a criminal offence that can lead to a fine and/or imprisonment for up to two years.⁹⁶ Moreover, Cloud M's failure to provide evidence to support its assertions that it does not issue invoices until exports are completed also leads us to this conclusion.

4.63 Having come to this conclusion, we also conclude that the Cloud M Terms and Conditions (Dec 2012) document is genuine and was provided by Cloud M to Wellington at the outset of their contractual relationship. The August and November Invoices, which we have concluded are genuine, show Cloud M attempting to impose a £10,000 porting charge per number for Number Portability, exactly the amount Cloud M would be empowered to impose under a term within the Cloud M Terms and Conditions (Dec 2012). Finally, Cloud M's failure to provide a copy of the terms and conditions that it claims to have provided at the outset of its contractual relationship with Wellington also gives weight to this conclusion.

⁹⁵ Document 044 of the Evidence Bundle. The email from [X] to [X] on 5 December 2017 (Document 056 of the Evidence Bundle).

⁹⁶ See section 144 of the Act.

4.64 Accordingly, we do not accept Cloud M's submission and conclude that the Cloud M Terms and Conditions (Dec 2012) and the August and November Invoices were documents generated by Cloud M and were provided by Cloud M to Wellington.

Cloud M's submission: during the Relevant Period, the Numbers were being used by 'myconnectanywhere.com', having been recycled by Cloud M after termination of its contract with Wellington

4.65 Cloud M has claimed that its contract with Wellington was terminated for breach of contract due to non-payment, and that after this that the Numbers were reassigned by Cloud M and are now (and throughout the Relevant Period were) used by another of its customers, myconnectanywhere.com.⁹⁷

4.66 Cloud M provided to Ofcom a copy of what it claimed to be its contract with myconnectanywhere.com, dated 4 August 2017 (the "Myconnectanywhere Contract")⁹⁸ which lists the following services to be provided by Cloud M:

"Connectivity Requirements

<i>CloudM Standard ADSL+2</i>	<i>QTY 1</i>
<i>CloudM Standard Line Rental</i>	<i>QTY 1</i>
<i>CloudM Standard Numbers</i>	<i>02085810061</i>
	<i>02085810062</i>
	<i>02085819434</i>
	<i>02082305708"</i>

It also states the customer and invoice address to be 'Attfield, Parkway, RH14 1DP'.

4.67 We do not accept this submission that the Numbers were being used by myconnectanywhere.com for two reasons. Firstly, this submission appears to be contrary to the evidence supplied by other parties and gathered in the course of the Investigation that indicates that:

- i) Wellington remained Cloud M's customer until at least 16 November 2017; and
- ii) Wellington was (and was known by Cloud M to be) the user of the Numbers at the time the Relevant Porting Request was made.

This evidence includes emails, messages and invoices that we consider were generated by Cloud M.

4.68 Of this evidence, we note, in particular:

- The August and November Invoices, dated 18 August 2017 and 11 November 2017 respectively, and the email to which the November Invoices were attached when sent

⁹⁷ See messages on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 – support@cloudmsolutions.co.uk at 13:29 on 10 November 2017 and at 16:09 on 14 November 2017 (Document 011 of the Evidence Bundle).

⁹⁸ Cloud M Hosted Services Contract between myconnectanywhere.com and Cloud M, signed by Stuart Makin on 4 August 2017 (Document 049 of the Evidence Bundle).

to Wellington, dated 16 November 2017, all dated *after* the date shown on the Myconnectanywhere Contract;

- The message from Cloud M posted on the HIPCOM Ticketing system on 26 August 2017, before the porting request on 3 November 2017 but *after* the date shown on the Myconnectanywhere Contract, in which Cloud M says: *‘The company Wellington Engineering **that currently have and use the numbers** [referring to the Numbers and 02085810062] are in financial trouble’*;⁹⁹ (emphasis added)
- the Porting Order Verification (“POV”), sent by BT to Gamma on 2 November 2017 as part of the porting process, lists the postcode ‘UB3 1SR’ against all three of the Numbers.¹⁰⁰ This is the postcode of Wellington’s registered office address, and as shown on the Hosted Services Contracts and, more recently, on the Telecom Service Agreements. The postcode for myconnectanywhere.com in the contract between Cloud M and myconnectanywhere.com is RH14 1DP.¹⁰¹ This was observed by BT in its timeline emailed to Broadsoft on 21 November 2017,¹⁰² in which it wrote:

*“It is also worth noting that the POV request was completed prior to the port orders being placed. **This shows that the address and end user details at the time the POV was completed, were for our customer and have only been changed since the port orders were cancelled and then disputed.** If you Google the post code provided on the POV for these numbers (UB3 1SR), it clearly states the numbers belonged to Wellington Engineering so it can only have been changed since this was done [...] (POV Attached as POV Request – BT)”* (emphasis added); and

- the 6 November 2017 email from Cloud M to Wellington that concerned the porting request for the Numbers. This email read as follows: (emphasis added)

“We had a call last week from your new supplier [sic] for your phone system and we have received a number porting request to move over on the 13/11/17 19.45hrs. (please see below)

Therefore please can you confirm the new suppliers [sic] company name and a contact of a person our support team can contact before the 13/11/17 to ensure [sic] we have the require [sic] information to allow the switch to take place and ensure the switch to them goes smoothly.”

Below this text was copied the message from Broadsoft to Cloud M on 3 November 2017 in which Broadsoft informed Cloud M of the porting request:

“We have received the below email from the Export team:

An export request has been received to port the following Installations:

02085810061

02085810062

⁹⁹ Message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 – support@cloudmsolutions.co.uk at 12:04 on 26 August 2017 (Document 011 of the Evidence Bundle, page 24)

¹⁰⁰ Document 020 of the Evidence Bundle.

¹⁰¹ Document 049 of the Evidence Bundle.

¹⁰² Email from [x] (Head of IP Operations/IP Transformation, BT Wholesale and Ventures) to [x] of Broadsoft at 15:09 on 21 November 2017 (Document 037 of the Evidence Bundle).

02085819434

02082305708

Order Type RTA

Customer required by date and time is 13/11/17 19.45hrs

If order type is RTA the port will take place anytime between CRD and CRD + 7 working days

If order type is FIXED the port will take place on CRD as shown above

Any cancellation of transfer must be received by 10/11/17 14:00hrs”¹⁰³

4.69 Secondly, we do not believe that myconnectanywhere.com was or is operational. In forming this view, we note that:

- the web address provided by Cloud M for myconnectanywhere.com, www.myconnectanywhere.co.uk, is an empty domain – as also noted by BT in its timeline.¹⁰⁴
- The only entity formation documentation we received from Cloud M was an unsigned partnership agreement.¹⁰⁵

4.70 Additionally, even if Cloud M’s submission is accepted, this would have been against the agreed industry process. The relevant section in the Manual reads as follows: (emphasis as in original)

“If a customer ceases service on a ported number, the Recipient CP must return the number to the Range Holder / Host. The Recipient CP uses the Cease Order type to notify the Range Holder / Host that a customer has ceased service on a number that had previously been ported, and that any cooling off period has expired. [...]

In certain circumstances the Recipient CP may retain the ported number in order to re-assign it to another account name on the Recipient CP’s Network, without reference to the Range Holder / Host. These circumstances are:

- *Change of name as a result of a business take-over where the new business has the same business interests at the same address.*
- *Change of name as a result of an amalgamation of two unrelated businesses, where the same business interests are maintained after amalgamation.”¹⁰⁶*

4.71 Applying the industry process here (and given that the above two exceptions do not appear to apply here), this would have meant that Cloud M, having ceased the service it was providing to Wellington and not ported the Numbers to another CP, should have returned the Numbers to Virgin Media. We therefore note that if Cloud M’s submission

¹⁰³ Document 024 of the Evidence Bundle. Also see: message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 – support@cloudmsolutions.co.uk at 05:24 on 13 October 2017 (Document 011 of the Evidence Bundle); the email from [x] of Cloud M to [x] of Wellington and others at 14:58 on 16 November 2017 with the November Invoices attached (Document 044 of the Evidence Bundle).

¹⁰⁴ See message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 – support@cloudmsolutions.co.uk at 10:18 on 30 November 2017 (Document 001 of the Evidence Bundle, page 3). The website was searched for on 6 July 2017.

¹⁰⁵ Document 077 of the Evidence Bundle.

¹⁰⁶ The Manual, section 15.1.

were to be accepted, it means that Cloud M did not act in accordance with industry-agreed practice.

- 4.72 Taking into consideration the above evidence, we do not accept Cloud M's submission and furthermore conclude that Wellington was the end-user of the Numbers until at least 16 November 2017.

Factual conclusions

- 4.73 In summary, we consider that the evidence set out in this section demonstrates that:
- Wellington has been the end-user of the Numbers since at least June 2013, and was the end-user of the Numbers as a customer of Cloud M until at least 16 November 2017;
 - The Numbers were ported to Cloud M in June 2013;
 - Wellington requested a port of the Numbers during July and August 2017, but Cloud M rejected these porting requests, citing that Wellington had unpaid debts;
 - Cloud M provided Wellington with the August Invoice on or after 18 August 2017, which included a £10,000 porting charge per number for two numbers;
 - Wellington provided MFTS with the Wellington CLOA on 23 October 2017 with a view to porting the Numbers from Cloud M to MFTS and this CLOA was used for three attempts to port the numbers;
 - Cloud M rejected these three attempts to port the Numbers, on 10 November 2017, 14 November 2017 and 16 November 2017;
 - Cloud M issued Wellington with the November Invoices, which included a £10,000 'porting charge' per number and a £5,000 'porting violation charge' per number for four numbers, including the Numbers;
 - Gamma and Virgin Media effected the porting of the Numbers on their systems on 16 November 2017, but this has only resulted in a partial port; and
 - To date, Cloud M has not offered or paid Wellington any compensation in relation to this porting request.

5. Assessment of contravention of GC18

- 5.1 This section sets out our reasons, including the evidence on which we rely, for concluding that Cloud M has contravened its regulatory obligations under GC18.
- 5.2 As noted in Section 4 above, three attempts were made to port the Numbers from Cloud M to MFTS between October and November 2017. Given that they all resulted from a single CLOA, we are treating them as one porting request that was submitted three times, rather than three separate requests.

Applicability of GC18

- 5.3 For the regulatory obligations in GC18 to apply to Cloud M, three conditions must be satisfied:
- a) Cloud M must be a “*Communications Provider*” for the purposes of GC18;
 - b) MFTS must be a “*Communications Provider*” for the purposes of GC18; and
 - c) Wellington must be a “*Subscriber*” for the purposes of GC18.

Cloud M is a “*Communications Provider*”

- 5.4 The General Conditions define “*Communications Provider*” (“CP”) in GC 18.11 as “*a person who provides an Electronic Communications Network or provides an Electronic Communications Service*”.
- 5.5 Section 32(1) of the Act defines “*electronic communications network*” as “*a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description*”. We consider that Cloud M’s activities do not fall within this definition as they are not providing a transmission system for the transmission of signals.
- 5.6 Section 32(2) of the Act defines “*electronic communications service*” (“ECS”) as “*a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service*”. Section 32(8) of the Act states that references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals. We consider that Cloud M is a CP within this definition as the provider of an ECS, for the reasons explained below.

The service provided to Wellington was an ECS

- 5.7 The services provided to Wellington by Cloud M are set out in two signed Cloud M Hosted Services Contracts. Specifically:
- the Hosted Services Contract between Cloud M and WEC listed the following services:
“*Telephony User Requirements*”
CloudM SIP Trunk Licence QTY 5

Connectivity Requirements

CloudM Standard ADSL+2 QTY 1
CloudM Standard Line Rental QTY 1"; and

- the Hosted Services Contract between Cloud M and WTS listed the following:

"Telephony User Requirements

CloudM SIP Trunk Licence QTY 3

Connectivity Requirements

CloudM Standard ADSL+2 QTY 1
CloudM Standard Line Rental QTY 1"

- 5.8 Additionally, the Hosted Services Contracts confirm that it was understood by the parties to the contract that Wellington would continue using the telephone numbers it had already been using in conjunction with Cloud M's services, and that Cloud M undertook to facilitate the porting of these, which included the Numbers, to Cloud M.
- 5.9 Standard Line Rental and Standard ADSL+2 would provide Wellington with a broadband connection, while the SIP Trunk Licences¹⁰⁷ will allow numbers to receive calls over the internet. Therefore, taken together with the undertaking by Cloud M contained in the agreement to facilitate porting, we conclude that a service being provided to Wellington is the routing of calls to the numbers ported on behalf of Wellington to Cloud M over IP Telephony.¹⁰⁸
- 5.10 This service does not appear to be a "content service" within the meaning set out in section 32(7) of the Act, as it does not involve the provision of material or the exercise of editorial control over the content of signals.
- 5.11 Accordingly, we consider the service provided to Wellington under the Hosted Services Contracts with Cloud M to fall within the definition of an ECS, as its principal feature is the routing of signals (i.e. calls).

Cloud M was the provider of the ECS

- 5.12 We consider that Cloud M, with its contractual relationship with the end-user, Wellington, is the provider of an ECS. We note as an aside that Cloud M was reselling a service provided by Broadsoft, who in turn was reselling a service provided by BT.¹⁰⁹
- 5.13 In essence, the Hosted Services Contracts show that there was a contractual arrangement between Cloud M and Wellington to provide Wellington with a service which enabled it to receive calls via a range of telephone numbers, including the Numbers. Such provision

¹⁰⁷ SIP trunking is a Voice over Internet Protocol (VoIP) technology based on the Session Initiation Protocol (SIP) by which internet telephony service providers deliver telephone services to customers.

¹⁰⁸ IP telephony (Internet Protocol telephony) is a general term for the technologies that use the internet to exchange voice, fax, and other forms of information that have traditionally been carried over telephone lines on the public switched telephone network (PSTN).

¹⁰⁹ See Section 4 above.

would have only been possible by the party offering the service, Cloud M, procuring the routing of calls to Wellington's numbers during the currency of the contract. Therefore, the principal feature of the service which Cloud M agreed to provide to Wellington under the contracts is the routing of signals.¹¹⁰ As such, if Cloud M's wholesale providers were to cease their services to Cloud M, Cloud M would still be contractually obliged to provide the service to Wellington. Accordingly, we consider that Cloud M was providing the ECS to Wellington and is therefore a CP for the purposes of GC18.¹¹¹

MFTS is a "Communications Provider"

The service provided to Wellington is an ECS

5.14 The services to be provided to Wellington by MFTS are set out in Telecom Service Agreements between MFTS and Wellington and document the overall service to be provided to Wellington.

The Telecom Service Agreement between MFTS and WEC listed the following services:

"Mohtly [sic] costs

SIP Trunks ([X])

Assured Voice

PSTN Rental

Call Costs

UK Landline

UK Mobile

Bespoke International

One off Costs

Number porting (29 Numbers)

Assured Broadband for Voice Installation"

The Telecom Service Agreement between MFTS and WTS listed the following services:

"Mohtly [sic] costs

SIP Trunks ([X])

Call Costs

UK Landline

UK Mobile

Bespoke International"

¹¹⁰ The contracts do not require either Broadsoft or BT, as Cloud M's wholesale providers, to provide that service to Wellington, and are silent on how Cloud M is to perform its contractual obligations, including on which wholesale CP should be used – See Cloud M Terms and Conditions (Dec 2012).

¹¹¹ See *Media Marketing & Promotions v Ofcom* [2006] CAT 12 ("MMP"), paragraphs 229-233

- 5.15 These services, particularly the SIP Trunks and the number porting, collectively indicate that the service being provided to Wellington under these Telecom Services Agreements is the routing of calls to the numbers ported on behalf of Wellington to MFTS over IP Telephony.
- 5.16 This service does not appear to be a “content service” within the meaning set out in section 32(7) of the 2003 Act, as it does not involve the provision of material or the exercise of editorial control over the content of signals.
- 5.17 Accordingly, we consider the service provided to Wellington by MFTS under the Telecom Service Agreements to fall within the definition of an ECS, as its principal feature is the routing of signals (i.e. calls).

MFTS is the provider of the service

- 5.18 MFTS is reselling a service provided by Gamma.¹¹² Yet, for the same reasons set out in relation to Cloud M above, we conclude MFTS to be the provider of the service, noting that:
- a) MFTS is contractually obliged to provide the service to Wellington; and
 - b) these obligations are independent from MFTS’ wholesale relationship with Gamma.¹¹³
- 5.19 Accordingly, we consider that MFTS was providing the ECS to Wellington and is therefore a CP for the purposes of GC18.

Wellington is a “Subscriber”

- 5.20 CPs are only obliged to provide Number Portability under GC18.1 to their “Subscribers”, defined as *“any person [...] who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services”*. “Public Electronic Communications Services” is defined by section 151 of the Act as *“any electronic communications service that is provided so as to be available for use by members of the public”*.
- 5.21 We have therefore considered whether:
- a) Cloud M is a provider of Public Electronic Communications Services (“PECS”); and
 - b) Wellington is a party to a contract with Cloud M for the supply of PECS.

Cloud M is a provider of Public Electronic Communications Services

- 5.22 For a service to be a PECS it must be:
- a) an ECS; and
 - b) provided so as to be available for use by members of the public.

¹¹² See Section 4 above.

¹¹³ See MFTS Terms and Conditions.

- 5.23 We have already found at paragraphs 5.7 to 5.11 above that Cloud M was providing an ECS.
- 5.24 Regarding the second limb, we have assessed whether Cloud M’s service is ‘provided so as to be available for use by members of the public’. In other words, whether it is a service that members of the public could use in order to send and/or receive electronic signals, and we consider that it is. Our rationale for this is two-fold:
- Cloud M offers such a service to any customer willing to pay and abide by Cloud M’s terms and conditions and therefore offers to provide its services to the public, which includes Wellington. For example, Cloud M’s website advertises its services to all businesses as follows: *“We are a UK leading provider of business solutions with an excellent customer service record of bring [sic] broadband, fibre, phone, mobile, networking and communications services to business [sic] of all sizes.”*
 - The service provided by Cloud M to Wellington is the routing of calls to the Numbers. By its nature, this is a service available for use by members of the public, as members of the public can make use of it to reach Wellington.
- 5.25 We therefore conclude that Cloud M is a provider of PECS.¹¹⁴

Wellington is a party to a contract with Cloud M for the provision of PECS

- 5.26 Wellington and Cloud M entered into the Hosted Services Contracts on 9 May 2013. As set out above at paragraph 5.9, the services provided under this contract included IP Telephony. We have already concluded that Cloud M ‘provided’ an ECS to Wellington pursuant to the Hosted Services Contracts,¹¹⁵ and that the ECS in question is also a PECS.¹¹⁶ We therefore conclude that Wellington is a party to a contract with Cloud M, which is a provider of a PECS.
- 5.27 Accordingly, we conclude that Wellington is a Subscriber for the purposes of GC18.¹¹⁷

Cloud M’s submissions that GC18 does not apply

- 5.28 During the course of our investigation, Cloud M has made a number of submissions to the effect that GC18 does not apply to the matters under consideration. We set out our responses to these submissions below.

Cloud M submission: GC18 does not apply to IP telephony services

- 5.29 Cloud M has submitted that it did not need to comply with GC18 for customers purchasing its IP Telephony service, such as Wellington, because these customers were not Subscribers within the meaning set out in GC18. Cloud M expressly mentioned the fact that these customers did not have access to emergency service numbers in support of this

¹¹⁴ See *MMP*, paragraphs 238-242.

¹¹⁵ See paragraphs 5.12 to 5.13.

¹¹⁶ See paragraphs 5.22 to 5.25.

¹¹⁷ This follows the rationale applied by the CAT applied in *MMP* at paragraphs 248-249.

argument.¹¹⁸ We explain below our understanding of Cloud M's submission and our assessment of it.

- 5.30 We believe that Cloud M may have made this assertion on the basis of out of date definitions of "Subscriber" and "Publicly Available Telephone Services", the latter definition referring to access to Emergency Organisations.
- 5.31 The contravention arose on 3 November 2017, and therefore the relevant General Conditions of Entitlement are those dated 28 May 2015. Accordingly, the applicable definition of "Subscriber" is the definition set out at GC18.11(n) (which does not refer to emergency service numbers or organisations). That is the definition Ofcom has applied here and which has led us to conclude that Wellington is a Subscriber for the purposes of GC18.

Cloud M submission: the service used by Wellington was not provided by Cloud M

- 5.32 In the course of the Investigation, Cloud M claimed that Wellington was not a Subscriber because *'the service they [Wellington] were on was hosted by a reseller of Cloud M's [sic]'*.¹¹⁹
- 5.33 This claim, however, is contrary to the evidence we have been provided. The signed Hosted Services Contracts are, in our view, evidence of a contract between Wellington and Cloud M to provide the services – Wellington's details are given under 'Customer and Invoice Address' at the top of the contracts next to 'CloudM Solutions Contact Details'. In addition, the Cloud M Terms and Conditions (Dec 2012),¹²⁰ which we have concluded was provided by Cloud M and accepted by Wellington when they entered the contract, states: *'CLOUDM agreed to provide the Service to the Customer and the Customer agreed to use the Service on the terms set out in this Agreement'*. Moreover, even if we had accepted Cloud M's submission that the Cloud M Terms and Conditions (Dec 2012) are not genuine, Cloud M supplied Ofcom with a set of its terms and conditions, dated 1 February 2017 ("Cloud M Terms and Conditions (Feb 2017)")¹²¹ that Cloud M allege were accepted by Wellington. This document includes similar wording and therefore indicates a contract between Wellington and Cloud M to provide services.¹²²
- 5.34 Furthermore, during the course of our Investigation we have been provided with a number of invoices stated to be from Cloud M to Wellington for the services outlined in the Hosted Services Contracts. These include the August and November Invoices that Cloud M disputes (these are discussed at paragraphs 4.52 to 4.64), but also invoices from 2013 that were

¹¹⁸ This argument was made in the Second Response. We note that under General Condition A3.2(b) (previously GC3.1(a)) CPs must take all necessary measures to ensure uninterrupted access to Emergency Organisations as part of any Publicly Available Telephone Services offered. For the avoidance of doubt, this investigation has not considered, and this Confirmation Decision makes no finding, as to Cloud M's compliance with its obligation under this General Condition.

¹¹⁹ Email from [redacted] of Cloud M to Sheryl Willson of Ofcom at 14:00 on 11 December 2017 (Document 046 of the Evidence Bundle).

¹²⁰ Document 005 of the Evidence Bundle.

¹²¹ Document 048 of the Evidence Bundle.

¹²² See paragraph 2.1.

provided by Cloud M,¹²³ and the February Invoices that are not disputed by Cloud M.¹²⁴ Ofcom considers it would be very unlikely that a business would (more than once) raise invoices for services and issue them to a party to which it did not provide services.

- 5.35 Taking into account the evidence described above, and in the absence of any evidence to the contrary that would support Cloud M's claim, we conclude that Wellington was Cloud M's customer and not a customer of a reseller of Cloud M.

Cloud M submission: Wellington had no right to port the Numbers

- 5.36 During the course of the Investigation, Cloud M submitted that Wellington signed over the 'ownership rights' to the Numbers in 2013 when it entered into the Hosted Services Contacts and was only 'renting' them thereafter. As a result, Cloud M submits that Wellington relinquished its right to port the Numbers. In an email to Ofcom, Cloud M stated:

"Therefore I can categorically state [...] that CloudM Limited have ALL ownership rights to these numbers and have done since 2013.

*The ownership of these number with the express permission of Wellington Engineering Company Limited was transferred from Wellington Engineering Company Limited to CloudM during the period of October to November 2013 and have remain [sic] for the last 4 year in that ownership. We have sign [sic] documents to prove this if required."*¹²⁵

- 5.37 Cloud M supplied Ofcom with a set of its terms and conditions, dated 1 February 2017,¹²⁶ that Cloud M alleged had been accepted by Wellington, which included the following:

"PLEASE READ THESE TERMS CAREFULLY BECAUSE THEY affect the legal rights between YOU and CLOUDM by, among other things,

(1) [...]

(2) [...]

(3) IF YOU ARE JOINING THE VIRTUAL NUMBER SERVICE YOU UNDERSTAND BY AGREEING TO PORT YOUR NUMBERS ONTO THE "CLOUDM ONE" SERVICE. YOU ARE TRANSFERING PERMENTELY [sic] ALL OWNERSHIP RIGHTS TO THESE NUMBERS TO CLOUDM LIMITED.

ONCE THE PORT IS COMPLETE THE TRANSER OF OWNERSHIP RIGHTS ARE TRANFERED [sic] AND ALL THE NUMBERS WILL BE REGISTRED [sic] TO CLOUDM LIMITED AND THE NEW SUBCRIBER [sic] WILL BE THE 3RD PARTY"

¹²³ Document 078 of the Evidence Bundle.

¹²⁴ Document 075 of the Evidence Bundle. There invoices were provided to us by Wellington in response to an information request.

¹²⁵ Email from [redacted] of Cloud M to Sheryl Willson of Ofcom at 14:45 on 23 November 2017 (Document 047 of the Evidence Bundle). See also message on HIPCOM Ticketing system (Broadsoft/Cloud M) posed by Breeze 8 – support@cloudmsolutions.co.uk at 16:09 on 14 November 2017 (Document 011, page 15).

¹²⁶ Document 048 of the Evidence Bundle.

- 5.38 Numbers cannot be owned by any person or business, as explained in a notice served by Ofcom on a company for contravening GC18, published in 2005:¹²⁷
- “[...] telephone numbers are a public resource and are administered by the regulatory authority (i.e. Ofcom in the UK). Ofcom agrees with the position [...] that no person or organisation can claim to own a telephone number as a result of the regulatory arrangements relating to the allocation and use of numbers; instead they possess a right of use. The extent of that right of use is determined by and must be construed by reference to, the regulatory arrangements governing the provision of electronic communications services including the relevant number allocation, the regulatory rules surrounding certain types of services (such as PATS) and other specific rules such as GC18.”*
- 5.39 This is reflected in the scheme of regulation under the Act, in that it provides for: the allocation of telephone numbers by Ofcom; the regulation of the allocation and adoption of numbers by Ofcom; and the withdrawal of telephone number allocations.¹²⁸
- 5.40 It follows that Cloud M cannot “rent” the Numbers to any party, including Wellington. Therefore, the assertion that: (i) Wellington transferred ownership of the Numbers to Cloud M; (ii) as a result, Wellington was not a Subscriber within the meaning of GC18; and (iii) Wellington was therefore was not entitled to port the Numbers, is not correct.
- 5.41 Moreover, even if Wellington agreed to the term outlined above, Cloud M’s obligation to comply with the express provisions within GC18 concerning Number Portability remained.¹²⁹ Cloud M cannot contract out of its regulatory obligations, nor could Wellington have waived, or otherwise be precluded from relying on, its rights under the General Conditions of Entitlement.¹³⁰

Cloud M submission: the Numbers were no longer being used by Wellington at the time of the porting request

- 5.42 Following from Cloud M’s assertion that Wellington gave up its ownership of the Numbers in 2013, Cloud M has claimed that after Wellington breached its contract with Cloud M for non-payment, the Numbers were reassigned by Cloud M to another one of its customers and are now being used by that customer, myconnectanywhere.com.¹³¹

¹²⁷ Ofcom, *Notification under Section 94 of the Communications Act 2003 of Contravention of General Condition 18: Notice served on Media, Marketing & Promotions (“MMP”) by the Office of Communications (“Ofcom”)*, 26 August 2005, http://webarchive.nationalarchives.gov.uk/20140704035113/http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_830/cw_830notice.pdf, paragraph 63.

¹²⁸ See in particular sections 56, 56A, 58 and 61.

¹²⁹ After the Relevant Period, on 1 October 2018, [revised General Conditions](#) came into force which include revised requirements in relation to Portability and Number Portability within GC B3.

¹³⁰ See *MMP*, paragraph 208.

¹³¹ See messages on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 – support@cloudmsolutions.co.uk at 13:29 on 10 November 2017 and at 16:09 on 14 November 2017 (Document 011 of the Evidence Bundle).

- 5.43 As we explain in detail in paragraphs 4.65 to 4.72 above, this submission is contrary to evidence we have received from other parties on this point. This evidence includes:
- invoices issued by Cloud M to Wellington;
 - messages and emails sent by Cloud M that explicitly recognise Wellington as the end-user of the Numbers; and
 - the POV completed by BT that returned Wellington’s postcode against all three of the Numbers;

all dated *after* the date on which Cloud M claims the Numbers were reassigned to another customer.

- 5.44 Taking into consideration this evidence, we do not accept Cloud M’s submission and furthermore conclude that that Wellington was the end-user of the Numbers at the time of the Relevant Porting Request.

Our approach to assessing compliance with GC18

- 5.45 We have found above that GC18 applies to the facts under consideration. In assessing Cloud M’s compliance with GC18, we have considered, in particular, the following:

“18.1 The Communications Provider shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges, to any of its Subscribers who so request.”

“18.5 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms...”

“18.9 Where Communications Providers delay the porting of a Telephone Number for more than one business day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.”

“18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers can access the compensation provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber.”

Contravention of GC18

Summary

- 5.46 We set out below that we conclude that Cloud M has failed to comply with the requirements of GC18, in that:
- Cloud M did not provide Portability as soon as was reasonably practicable in relation to that request on reasonable terms, contrary to GC18.5;
 - Cloud M did not provide Number Portability to Wellington within the shortest possible time and on reasonable terms and conditions (including charges), contrary to GC18.1;
 - Cloud M did not provide reasonable compensation as soon as reasonable practicable to Wellington in respect of the abuse of the porting process, contrary to GC18.9; and
 - Cloud M has not set out information for Wellington regarding how to access compensation and how such compensation would be provided in a clear, comprehensive and easily accessible form, contrary to GC18.10.

Cloud M did not provide Portability as soon as was reasonably practicable upon receipt of the request (GC18.5)

- 5.47 For the purposes of GC18, “*Portability*” means any facility which may be provided by one CP to another CP enabling any Subscriber who requests Number Portability to continue to be provided with a communications service by reference to the same telephone number, irrespective of the person providing such a service.¹³² Consequently, it is a broad term, covering any actions or processes that result in the successful porting of a telephone number.
- 5.48 GC18.5 places an obligation on CPs, upon request from another CP, to “*provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms*”.
- 5.49 To assess Cloud M’s compliance with GC18.5, we have considered:
- a) whether MFTS requested Portability;
 - b) whether Cloud M provided Portability, and if so, as soon as reasonably practicable; and
 - c) if Cloud M did not provide Portability as soon as reasonably practicable, why it did not do so.

Did MFTS request Portability?

- 5.50 As we have set out above in paragraphs 4.23 to 4.24, MFTS requested Portability by providing its wholesale provider, Gamma, with the Wellington CLOA on 1 November 2017. Gamma then passed the request to Broadsoft, via BT, on 2 November 2017. This request was received by Cloud M from Broadsoft, its wholesale provider, on 3 November 2017.

¹³² See General Condition 18.11(k).

Did Cloud M provide Portability?

- 5.51 The evidence shows that Cloud M has not provided Portability to MFTS to date. As set out above in paragraphs 4.28 to 4.30, following an exchange of messages with Broadsoft about the request, Cloud M asked for it to be rejected on 10 November 2017, on the basis that it was *'not requested by number owners'*.¹³³ Cloud M explicitly states in the same message: *'FRAUD PORT: Incorrect company requesting ports number not owned by Wellington Engineering'* and *'Owner of these numbers is the company Myconnectanywhere based in Newbury, Berkshire. NOT Wellington Engineering'*.
- 5.52 Furthermore, as noted in paragraphs 4.32 to 4.44, this same porting request was resubmitted to Cloud M on 14 and 16 November 2017. Both were rejected with the same message,¹³⁴ which began:

*"Our lawyers and I looked at this and the same is said this port is to be REJECTED on the ground of the LOA that is attached yet again in the:
Wrong Company Name
Wrong Address
Wrong Post Code
For the avoidance of doubt the only person authorised to sign a LOA for these numbers is the current contract holder which is not on this LOA. Therefore REJECTED."*

Why did Cloud M fail to provide Portability?

- 5.53 Cloud M's messages to Broadsoft included a statement of its reason for rejecting this porting request – that the information in the CLOA did not match the details on Cloud M's systems for the Numbers.¹³⁵ Cloud M was claiming that it did not come from the 'owner' (and end-user) of the Numbers, which Cloud M claimed to be a company called myconnectanywhere.com.
- 5.54 However, having considered the evidence gathered and in the absence of evidence from Cloud M to the contrary, we have concluded that Wellington was, and was known by Cloud M to be, the user of the Numbers at the time of the request. This is discussed in detail at paragraphs 4.65 to 4.72 above.
- 5.55 The email sent by Cloud M to Wellington on 24 August 2017 – after three porting requests by Wellington between July and August, but prior to the Relevant Porting Request – suggests that Cloud M had a policy not to accept porting requests from departing Subscribers in circumstances where Cloud M considered that the Subscriber had outstanding balances owing to it.¹³⁶ In its email Cloud M wrote (emphasis added):

"This is another unfortunate situation has arisen because of actions of your team who in the past tried 4 times to port numbers that are under contract. Which we rejected

¹³³ See Document 011 of the Evidence Bundle, page 19.

¹³⁴ See Document 011 of the Evidence Bundle, pages 10 and 15.

¹³⁵ See paragraphs 4.29, 4.39 and 4.43.

¹³⁶ See Document 013.

and is also breach of contract. To be fair you are probably trying it again. However porting of numbers on/off our platform needs our authorisation which are monitored and by [sic] will be always rejected by us with outstanding balances.”

- 5.56 Additionally, we have found that after the first two attempts of the Relevant Porting Request, Cloud M issued Wellington with the November Invoices,¹³⁷ which it described as ‘full and final invoices’.¹³⁸ Cloud M, later on the same day, then rejected the third attempt of the Relevant Porting Request. We infer from these facts that Cloud M rejected all three attempts of the Relevant Porting Request because it was following its policy, outlined in the email of 24 August 2017, to reject porting requests from Subscribers with outstanding balances.
- 5.57 We do not consider outstanding debts to be a valid reason for rejecting a porting request, as we consider that there are other more appropriate mechanisms for recovering unpaid debts (such as civil litigation). It is therefore inappropriate to permit the porting process to be disrupted by allowing rejections for outstanding balances. Moreover, were it to be a valid reason, it would expose end-users to the risk of their numbers being used as leverage in disputes over unpaid debts, as telephone numbers, particularly main contact numbers, can be particularly valuable for businesses.¹³⁹
- 5.58 We note that outstanding debts are also not considered a valid reason for rejecting a port in the Manual. When discussing Order Validation (the part of the porting process where the losing parties accept or reject the porting request), the Manual reads as follows (emphasis added):
- “This is the process that the LCP [meaning the Losing Provider] undertakes in order to “accept” or “reject” an order that they have received. **The LCP can only “accept/reject” based on the information that is included in the porting order (e.g. The LCP cannot reject a porting order if, for example, the customer is currently in debt).** The LCP has up to 24 hours to undertake the appropriate validation and return either an “acceptance” or “rejection” (with the corresponding rejection code).”¹⁴⁰*
- 5.59 Cloud M has also claimed that Wellington had no right to port the Numbers because (i) it had transferred ownership of them to Cloud M in 2013 or (ii) that the Numbers had been assigned to a new customer and Wellington was therefore not the Subscriber. At paragraphs 4.65 to 4.72 and 5.36 to 5.41 above we set out our reasons for dismissing these submissions.
- 5.60 It follows from the above that, to date, we have not received any evidence from Cloud M or any other party indicating that there was a valid reason for Cloud M to reject the port.

¹³⁷ Documents 042 and 043 of the Evidence Bundle. Also see paragraphs 4.52 – 4.64 in which we discuss our finding in relation to the authenticity of the November Invoices.

¹³⁸ See Document 044 of the Evidence Bundle.

¹³⁹ This follows the position taken by Oftel – see Oftel, Numbering Directive: Number Portability Requirements, January 2000,

<http://webarchive.nationalarchives.gov.uk/20080715053441/http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/port0100.htm>, paragraph B.9. Also see paragraph 2.3.

¹⁴⁰ The Manual, page 23.

As such, we consider that Cloud M, by rejecting this request (without a valid reason for doing so), did not provide Portability as soon as was reasonably practicable upon receipt of the porting request from MFTS.

Cloud M's submission: it was not an active participant in the porting process

5.61 Cloud M has submitted that it is not actively involved in the porting process and that Broadsoft is responsible for validating porting requests. It stated in a response to a question in an information request sent to it by Ofcom that:

“CloudM Limited do not deal with export requests this is done by the porting team at their service providers Broadsoft as they have a dedicated porting team. CloudM only get notifications from Broadsoft after the decision is made to allow export or not.”¹⁴¹

5.62 We do not accept Cloud M's representations on this point. The Order Validation part of the process as set out in the Manual can only be completed by the Losing Provider – i.e. the party with the contractual relationship with the Subscriber – which in this case is Cloud M. This is because it requires knowledge of the installation address (the address to which the telephone line is provided) and the Subscriber's billing address and these are matters that only the Losing Provider would know.

5.63 In addition, it is also clear from the evidence set out at Section 4 above¹⁴² that:

- a) Broadsoft requested Cloud M to confirm on a number of occasions whether the porting requests should be accepted or rejected;¹⁴³
- b) Cloud M issued express instructions to Broadsoft to reject the November porting request on at least three occasions;¹⁴⁴
- c) Cloud M understood that it was the decision maker with the power to accept and reject the porting request;¹⁴⁵
- d) Cloud M expressly accepted in email correspondence that it was responsible for past rejections;¹⁴⁶ and

¹⁴¹ Response from Cloud M to the information request dated 8 March 2018, provided to Ofcom on 22-23 March 2018 (“Cloud M First Response”), Q3 (Document 051 of the Evidence Bundle).

¹⁴² See, in particular, paragraphs 4.20 to 4.48.

¹⁴³ See, in particular, message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Broadsoft at 09:01 on 7 November 2017 which said: ‘Please confirm whether you are happy for this export to go ahead or require us to request this to be cancelled’ (discussed at paragraph 4.29); message on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Broadsoft at 12:02 on 14 November 2017 which said: ‘Please let me know if you have a valid rejection reason by 14:00 today or the numbers will export to the gaining provider.’ (discussed at paragraph 4.34) (Document 011 of the Evidence Bundle).

¹⁴⁴ See, for example, messages on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 – support@cloudmsolutions.co.uk at 13:29 on 10 November 2017, at 16:09 on 14 November 2017, and at 18:08 on 16 November 2017 (discussed at paragraphs 4.29, 4.39 and 4.43) (Document 011 of the Evidence Bundle).

¹⁴⁵ See, in particular, the email from [x] (Accounts Director, Cloud M) to [y] at 07:33 on 24 August 2017 which said: ‘This is another unfortunate situation has arisen because of actions of your team who in the past tried 4 times to port numbers that are under contract. Which [sic] we rejected’.

¹⁴⁶ See, in particular, the email from [x] (Accounts Director, Cloud M) to [y] at 07:33 on 24 August 2017 which said: ‘... Which [sic] we rejected’.

e) Broadsoft acted on Cloud M’s instructions and rejected the port request as instructed.¹⁴⁷

5.64 Based on the above, we consider that Cloud M was an active participant in the porting process under consideration and took active steps to reject the port, notwithstanding that it had been provided with all the necessary information needed to accept the port. We further note that Cloud M has not put forward any valid reason for rejecting the port.

Cloud M has not provided Number Portability to Wellington within the shortest possible time and on reasonable terms and conditions (including charges) (GC18.1)

5.65 For the purposes of GC18, “*Number Portability*” means a facility whereby Subscribers who so request can retain their telephone number, independently of the person providing the telephone service to the Subscriber. In essence, Number Portability and Portability (the terms used in GC18.5) both concern facilities to enable Subscribers to port their telephone numbers; they differ in that Portability relates to facilities provided by CPs to other CPs, whereas Number Portability relates to facilities provided directly to Subscribers.

5.66 GC18.1 requires CPs to “*provide Number Portability within the shortest possible time... on reasonable terms and conditions, including charges, to any of its Subscribers who so request*”. To assess Cloud M’s compliance with GC18.1, we have considered:

- a) whether Wellington requested Number Portability;
- b) whether Cloud M provided Number Portability, and if so;
- c) whether it was provided within the shortest possible time; and
- d) whether it was provided on reasonable terms and conditions, including charges.

Did Wellington request Number Portability from Cloud M?

5.67 As noted in Section 4 above, Wellington made a request for Number Portability on 23 October 2017 in relation to 28 telephone numbers, including the Numbers. This request, which included all information necessary to port, was passed along the supply chain and was originally received by Cloud M on 3 November 2017.¹⁴⁸

Did Cloud M provide Number Portability?

5.68 As noted above, Cloud M rejected this request on 10 November 2017.¹⁴⁹ The request was resubmitted on 14 November 2017 and again on 16 November 2017, but was rejected on

¹⁴⁷ See, for example, Broadsoft’s email to Cloud M dated 16 November 2017, which noted: “*We have provided your rejection reason which resulted in the export being cancelled...We have consequently provided your rejection reason again as per previous replies to this ticket and the export is now cancelled and closed off.*”

¹⁴⁸ See paragraphs 4.20 to 4.24.

¹⁴⁹ See paragraphs 4.29 to 4.30.

the same day by Cloud M on both occasions.¹⁵⁰ As also noted above, we have concluded that Cloud M did not have a valid reason for rejecting the porting request.¹⁵¹

Could Cloud M still provide Number Portability in the shortest possible time?

5.69 Based on the evidence set out in paragraphs 4.29 to 4.30, the Subscriber's, in this case, Wellington's, request for a facility whereby it could retain the Numbers was denied. We therefore conclude that Cloud M, by rejecting this request (without a valid reason for doing so), did not provide Number Portability in the shortest possible time upon receipt of the porting request from Wellington.

Did Cloud M provide Number Portability on reasonable terms and conditions, including charges?

5.70 As set out above, we conclude that Cloud M did not provide Number Portability. Notwithstanding this, we have considered whether Number Portability was available to Wellington on reasonable terms and conditions, including charges, as required by GC18.1. This is because if Number Portability was offered on reasonable terms and conditions and Wellington had refused to adhere to such terms and conditions including paying reasonable charges, a refusal to meet those may be a valid reason for not providing Number Portability. We therefore consider below whether Cloud M offered Number Portability on reasonable terms and conditions, including charges, as required by GC18.1.

5.71 As noted above at paragraphs 4.52 to 4.64, we have found that:

- The Cloud M Terms and Conditions (Dec 2012) formed part of the contractual agreement between Wellington and Cloud M and those terms included a term that Cloud M may “charge up to £10,000 per number ported away for [sic] their service.”
- Cloud M issued Wellington with the November Invoices after the porting request was first received by Cloud M. These invoices contained charges per number of £10,000 for ‘Porting Charges’ and a further £5,000 for ‘Porting Violation’ in relation to the Numbers.¹⁵²

We therefore consider whether £15,000 per number (£10,000 for ‘porting charges’ plus £5,000 for ‘porting violation’) is a reasonable charge for Number Portability.

5.72 In reaching a view on whether any direct charge to Subscribers for Number Portability is “reasonable”, we have assessed whether that charge is derived from the reasonable costs actually incurred by the CP in providing Number Portability to the Subscriber.

5.73 We requested from Cloud M information on its costs for providing Number Portability. However, in response, Cloud M did not provide any such cost information, arguing that it is

¹⁵⁰ See paragraphs 4.34 to 4.40 and 4.42 to 4.44.

¹⁵¹ See paragraphs 5.53 to 5.60.

¹⁵² See paragraphs 4.45 to 4.47.

not an active participant in the porting process (an argument discussed above in paragraphs 5.61 to 5.64). Its response read:

“As answered before CloudM Limited have no responsibility on number porting it is done by Broadsoft all CloudM do in relation to porting is supply LOA to Broadsoft in the event of incoming number. We have told you we have NO responsibility in exports this is done by Broadsoft so we can never be accused of this stopping export as we can not possibly have.”¹⁵³

- 5.74 We have therefore had little alternative but to use information from other CPs as a proxy.
- 5.75 Our research shows that various CPs that act as Resellers in porting chains impose porting away charges that range from £5 to £50 per number.¹⁵⁴ We would expect that these charges are unlikely to be below the costs incurred by these providers in providing Number Portability to departing customers. Therefore, in the absence of any evidence to suggest that Cloud M’s costs are greater than those of other CPs, we anticipate that Cloud M would need to charge Subscribers a similar porting away charge to recover its costs. Even if Cloud M’s costs are greater, the order of magnitude of the difference between the charges levied by Cloud M and other providers suggests that it is unlikely that all of this difference is accounted for by Cloud M having higher costs.
- 5.76 Therefore, given that the available evidence suggests that Cloud M’s porting away charges to Wellington (£15,000 per number) are in excess of the reasonable costs incurred by the CP in providing Number Portability to the Subscriber, we conclude that Cloud M imposed unreasonable terms, in particular in respect of charges, for Number Portability, contrary to GC18.1.

Cloud M’s actions constitute an abuse of the porting process for which Cloud M has not paid reasonable compensation to Wellington (GC18.9)

- 5.77 GC18.9 requires that reasonable compensation is provided as soon as is reasonably practicable where a CP delays the porting of a number for more than one business day or where there is an abuse of porting by them or on their behalf. As such, we have considered:
- i) whether Cloud M delayed more than one business day the porting Wellington’s number; and/or
 - ii) whether Cloud M’s actions constituted an abuse of porting.
- 5.78 We then assess whether Cloud M has or should have paid reasonable compensation to Wellington.

¹⁵³ Response from Cloud M to the information request dated 28 June 2018, provided to Ofcom on 6 July 2018 (“Cloud M Fourth Response”), Q1 (Document 054 of the Evidence Bundle).

¹⁵⁴ Desk research that identified the porting away charges of seven CPs from their websites and for speaking with their sales representatives.

Did Cloud M's actions constitute an abuse of porting?

- 5.79 GC18.9 requires reasonable compensation to be provided where there has been an abuse of porting by a CP or on their behalf.
- 5.80 When the changes to the GCs were made in May 2011, some respondents to the earlier consultation sought additional guidance from Ofcom on the interpretation of what is meant by an 'abuse' of porting.¹⁵⁵ We decided it would be beneficial to provide some further clarification, and so included the following guidance in the statement:
- "... We consider that an abuse of porting is likely to include **circumstances where CPs fail to adhere to the documented industry agreed porting processes insofar as the subscriber does not receive the porting service that they would have received had the process been properly complied with...** That is not to say that in every instance where industry processes are not adhered to, and this impacts on the overall porting experience for the consumer, that compensation should be paid, particularly where the delay occurs as a result of the consumer or force majeure. However, we consider that industry processes are a good benchmark from which to consider whether an abuse has occurred."*¹⁵⁶(emphasis added)
- 5.81 Consistent with the above, we have therefore considered whether Cloud M adhered to the industry agreed porting processes and, if not, whether in all the circumstances an abuse of porting has occurred for which compensation should be payable.
- 5.82 As noted at paragraphs 4.24 to 4.30, we have concluded that Cloud M, when required to validate the porting request against the information supplied in it, did not do so and instead rejected the request, claiming that it did not come from the end-user of the Numbers. This claim, however, is contrary to the evidence we have gathered, and we have found that Cloud M rejected the porting request because it was following its policy, outlined in its email of 24 August 2017 to Wellington, to reject porting requests from Subscribers with outstanding balances – *"However porting of numbers on/off our platform needs our authorisation which are monitored and by [sic] will be always rejected by us with outstanding balances."*¹⁵⁷
- 5.83 As discussed above at paragraphs 5.55 to 5.58, we have found that this is not a valid reason to reject a porting request, which is also the position adopted in the Manual. As such, we have concluded that Cloud M failed to adhere to industry agreed porting processes.
- 5.84 Having reached this view, we consider that in all the circumstances this is an abuse of porting for which compensation should be payable. The evidence shows that Cloud M repeatedly rejected the Relevant Porting Request without a valid reason. Cloud M should therefore have provided Wellington reasonable compensation as soon as reasonably

¹⁵⁵ Ibid, paragraph 10.64.

¹⁵⁶ Ibid, paragraph 10.65.

¹⁵⁷ Document 013 of the Evidence Bundle.

practicable, in accordance with GC18.9. Having not yet done so, we consider that Cloud M contravened of GC18.9.

- 5.85 The obligation to pay compensation takes effect “as soon as reasonably practicable” after the abuse of porting took place. What is considered “as soon as reasonably practicable” depends on the particular circumstances of each and every case. In this case, we consider that it would be reasonably practicable to pay compensation within one calendar month of the abuse of porting. As we have concluded that the abuse of porting took place on or around 3 November 2017, we consider that Cloud M’s contravention of GC18.9 has been ongoing since at least 3 December 2017.
- 5.86 Having concluded that Cloud M’s actions constitutes an abuse of porting for the purposes of GC18.9, it is not necessary to consider whether compensation may have been due as a result of Cloud M delaying the porting of the Numbers by more than one business day (see (i) at paragraph 5.77).

Cloud M did not set out in a clear, comprehensive and easily accessible form how Subscribers can access compensation in respect of porting delay or abuse (GC18.10)

- 5.87 GC18.10 requires CPs to set out for Subscribers in a clear, comprehensive and easily accessible form how they can access the compensation provided for in GC18.9, and how any such compensation will be paid. Compliance with GC18.10 is important as it requires CPs to supply appropriate information to its customers, so they are aware of their right to compensation and how to exercise that right.
- 5.88 Unlike those of the other provisions considered above in this section, our assessment of Cloud M’s compliance with this provision begins at the outset of their contractual relationship in 2013, as Cloud M could have satisfied its requirement under GC18.10 from that point onwards.
- 5.89 The Cloud M Terms and Conditions (Dec 2012), which we consider were supplied by Cloud M to Wellington at the outset of their contractual relationship in May 2013,¹⁵⁸ does not refer to porting compensation.¹⁵⁹ Cloud M’s current terms and conditions¹⁶⁰ state at paragraph 20.3: *‘Any change to the date of Your [sic] number transfer due to the Porting Activation Requirements not being completed shall not constitute a delay or abuse in porting and shall not give rise to a claim for compensation.’*
- 5.90 The obligation to pay compensation under GC 18.9 rests with the CP which delayed a port or “where there has been an abuse of porting by them or on their behalf”. Although there is information on Cloud M’s website about porting compensation – to which Cloud M drew

¹⁵⁸ Cloud M submits that the Cloud M Terms and Conditions (Dec 2012) are not genuine and we consider this submission at paragraphs 4.52 to 4.64.

¹⁵⁹ Cloud M Terms and Conditions (Dec 2012) (Document 005 of the Evidence Bundle)

¹⁶⁰ Cloud M Terms and Conditions (Feb 2017) (Document 048 of the Evidence Bundle)

our attention,¹⁶¹ it directs the Subscriber to their new provider notwithstanding that the obligation to pay compensation may in fact lie with Cloud M and not the new provider. The relevant pages contain the following text:

*“Where you wish to transfer your number away from CloudM and we receive a transfer request from your new communications provider we shall take all reasonable steps to process the transfer of your number as quickly as possible. If you believe compensation should be paid because a number transfer is delayed you should contact your new provider and resolve the issue with them.”*¹⁶²

- 5.91 In our view, the text within Cloud M’s terms and conditions and on its website does not set out in a clear, comprehensive and easily accessible form: (a) how Wellington could access compensation (in respect of delay or an abuse of the porting process); and (b) how such compensation would be paid to Wellington, in contravention of GC18.10. Indeed, the wording included on Cloud M’s website was liable to mislead customers about their right to claim compensation from Cloud M, or how they might exercise that right.
- 5.92 We consider that Cloud M’s contravention of GC18.10 has been ongoing since Wellington entered into the Hosted Services Contracts on 9 May 2013. During our investigation, we did not receive any evidence indicating that Cloud M (including via its website) provided the required information to Wellington during the term of its contractual relationship. In addition:
- a) the Terms and Conditions (Dec 2012), which we have concluded formed part of the contract between Wellington and Cloud M,¹⁶³ did not refer to porting compensation, and we have not been provided with any evidence to suggest that these were superseded by terms and conditions that satisfied Cloud M’s obligations under GC18.10;¹⁶⁴ and
 - b) we have found that text about compensation on Cloud M’s website does not satisfy Cloud M’s GC18.10 obligations, and we have not been provided with any evidence to suggest that the required information was previously on Cloud M’s website¹⁶⁵ (i.e. between Wellington entering into the Hosted Services Contract with Cloud M and the end of the Relevant Period).
- 5.93 Therefore, we consider that the contravention has been ongoing since 9 May 2013.

¹⁶¹ See Response from Cloud M to the information request dated 8 March 2018, provided to Ofcom on 23 March 2018, Q10 (Document 079 of the Evidence Bundle).

¹⁶² <http://www.cloudm.co.uk/contact-us/number-porting-compensation-scheme> [accessed on 9 July 2018] (Document 058 of the Evidence Bundle).

¹⁶³ See paragraphs 4.52 to 4.64.

¹⁶⁴ See paragraphs 4.56 to 4.59.

¹⁶⁵ See Document 058 of the Evidence Bundle.

Conclusions on breaches of GC18

- 5.94 Based on the analysis and evidence set out above, we conclude that Cloud M has failed to comply with the requirements of GC18, in that Cloud M:
- did not provide Portability as soon as was reasonably practicable in relation to that request on reasonable terms, contrary to GC18.5;
 - did not provide Number Portability to Wellington within the shortest possible time and on reasonable terms and conditions (including charges), contrary to GC18.1;
 - did not provide reasonable compensation as soon as reasonable practicable to Wellington in respect of what we have found to have been abuse of the porting process, contrary to GC18.9; and
 - did not set out in a clear, comprehensive and easily accessible form for Wellington, how they can access the compensation provided for in GC18.9 and how such compensation would be paid to Wellington, contrary to GC18.10.
- 5.95 We set out in Section 6 below our decision on the appropriateness of the imposition of a penalty on Cloud M in relation to these contraventions, and any other remedies.

6. Penalty and remedies for contravention of GC18

6.1 In light of our conclusions set out in Section 5 that Cloud M has contravened GC18, in this section we set out our decision to impose a penalty on Cloud M and our reasons for the level of the penalty imposed, and the steps we are requiring Cloud M to take to remedy the consequences of the contraventions.

Summary

6.2 We have decided to impose a penalty of £50,000 on Cloud M for the contraventions of GC18 we have identified.¹⁶⁶ Our view is that this is appropriate and proportionate to the contraventions.

Consideration of whether to impose a penalty

6.3 We have decided that a financial penalty is an appropriate and proportionate response to the contraventions we have found in respect of Cloud M. We have reached this conclusion in light of the following features of this case:

- **The importance of the Number Portability process to consumers.** Number Portability is a particularly important mechanism in ensuring effective competition in the telecoms sector, which promotes customer choice and reduces barriers to consumers' ability to switch providers. Given this, it is crucial that the process for porting numbers is easy, reliable and convenient.
- **Cloud M's apparent disregard for the rules within GC18.** As detailed in Section 5, we have found that Cloud M repeatedly rejected requests to port the Numbers without a valid reason – of those listed in the Manual or otherwise – for doing so.¹⁶⁷ Additionally, we have found that Cloud M included text on its website concerning how its customers could access compensation which was liable to mislead, despite needing to provide information about compensation in a clear, comprehensive and easily accessible form under GC18.10.¹⁶⁸
- **The harm suffered by Wellington as a result of the contraventions.** At the time of the porting requests, two of the Numbers were Wellington's main customer contact numbers and, as a result of the contraventions, customers are likely to have been unable to consistently reach Wellington for over ten months.

¹⁶⁶ Under section 96B(2) of the Act, where the Notification relates to more than one contravention, Ofcom has discretion to impose a separate penalty in respect of each contravention. In the present case, Ofcom considers it appropriate to impose a single penalty on Cloud M for all of the contraventions in view of the fact that the contraventions all relate to a single porting request by its customer, Wellington.

¹⁶⁷ See paragraphs 5.50 to 5.60.

¹⁶⁸ See paragraph 6.27.

6.4 We consider that a financial penalty will also help to secure Ofcom's principal duty of furthering the interests of citizens and consumers by incentivising CPs to comply with their regulatory obligations.

Level of the penalty

6.5 Having decided to impose a penalty, the next consideration is its amount. In that regard, we have considered the relevant statutory obligations and our Penalty Guidelines.¹⁶⁹

Statutory provisions

6.6 Section 97 of the Act provides that the amount of a penalty notified under section 96A may be such amount not exceeding ten per cent of the notified person's turnover for relevant business for the relevant period as Ofcom determine to be appropriate and proportionate to the contravention for which it is imposed.

6.7 Section 392 of the Act requires Ofcom to prepare and publish a statement containing guidelines for determining penalties, including penalties imposed under sections 96A to 96C of the Act. Section 392(6) of the Act requires us to have regard to those guidelines when determining such penalties. The current version of the Penalty Guidelines was published on 14 September 2017.

Ofcom's Penalty Guidelines and relevant factors

6.8 As set out in our Penalty Guidelines, Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty.¹⁷⁰ The particular factors we have considered in respect of the level of penalty in this investigation are:

- Our statutory duties, including under section 3(3) of the Act, to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
- that the central objective of imposing a penalty is to deter behaviour which contravenes the regulatory requirements and incentivise companies to comply with their regulatory obligations. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive for compliance, having regard to the seriousness of Cloud M's contraventions and its size and turnover;¹⁷¹
- that there is not necessarily a direct linear relationship between the size and turnover of the regulated body, Cloud M, and the level of the penalty;¹⁷²
- the seriousness of Cloud M's contraventions;
- the duration of Cloud M's contraventions;

¹⁶⁹ Ofcom, *Penalty Guidelines - Section 392 Communications Act 2003*, 14 September 2017, https://www.ofcom.org.uk/data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf.

¹⁷⁰ *Penalty Guidelines*, paragraph 1.11.

¹⁷¹ *Penalty Guidelines*, paragraph 1.11.

¹⁷² *Penalty Guidelines*, paragraph 1.9.

- the degree of harm caused by the contraventions;
- the extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, of the contraventions;
- whether the contravention continued, or timely and effective steps were taken to end it, once Cloud M became aware of it; and
- Cloud M's size and turnover.

We set out more detail in relation to some of these factors below.

6.9 In addition, the Penalty Guidelines set out that:

*"Ofcom will have regard to any relevant precedents set by previous cases, but may depart from them depending on the facts and the context of each case. We will not, however, regard the amounts of previously imposed penalties as placing upper thresholds on the amount of any penalty."*¹⁷³

6.10 We therefore also consider a relevant precedent in making our decision on the appropriate and proportionate amount of any penalty.

Deterrence

6.11 In accordance with Penalty Guidelines, the central obligation of imposing a penalty is deterrence:

"1.4 All businesses should operate in compliance with the law, taking into account any relevant guidelines where appropriate. As such, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to deter the business from contravening regulatory requirements, and to deter the wider industry from doing so.

*1.5 In particular, the level of the penalty must be sufficiently high to have the appropriate impact on the regulated body at an organisational level. It should incentivise the management (which is ultimately responsible for the conduct and culture of the regulated body) to change the conduct of the regulated body as a whole and bring it into compliance, achieving this, where necessary, by changing the conduct at different levels within the organisation. The level of the penalty should be high enough that the management recognises that it is not more profitable for a business to break the law and pay the consequences, than it is to comply with the law in the first instance, and that it should therefore discourage bad conduct and encourage good practices and a culture of compliance across the organisation."*¹⁷⁴

¹⁷³ Penalty Guidelines, paragraph 1.14.

¹⁷⁴ Penalty Guidelines, paragraphs 1.4 to 1.5.

The seriousness of the contraventions

6.12 We have considered the policy intent behind the introduction of GC18 in assessing the seriousness of the contravention. In this case, GC18 is essential to consumers as it safeguards their right to port telephone numbers. This reduces the barriers to switching providers and promotes customer choice, both of which are important for ensuring effective retail competition in the telecoms sector.

The duration of the contraventions

6.13 A contravention which is ongoing for a longer duration may be viewed as more serious than one which was of short duration.

6.14 In this case, we have found that Cloud M has breached GC18 for the following durations:

- a) by failing to provide Portability of the Numbers to MFTS as soon as reasonably practicable, in breach of GC18.5: from 3 November 2017 to 17 September 2018 (over ten months);
- b) by failing to provide Number Portability to Wellington within the shortest time possible, in breach of GC18.1: from 3 November 2017 to 17 September 2018 (over ten months);
- c) by failing to pay compensation to Wellington, in breach of 18.9: since at least 3 December 2017 to 17 September 2018 (over nine months); and
- d) by failing to set out for Wellington how Wellington could access compensation and how it would be paid in documentation, in breach of 18.10: since May 2013 to 17 September 2018 (over five years).

6.15 In the context of this investigation, we consider that the duration of the contraventions marginally aggravates the seriousness of the contraventions.

The degree of harm caused by the contraventions

6.16 We have given consideration to the degree of harm caused by the contraventions, whether actual or potential, including any increased cost to the customer and other market participants. In this case, in relation to the contraventions of GC18.1 and GC18.5, we understand that two of the Numbers were, and at least one remains, main customer contact numbers for Wellington.¹⁷⁵ Therefore, despite Gamma and Virgin Media's actions (outlined in paragraph 4.50 above), as a result of Cloud M's contraventions some customers and/or potential customers are likely to have been calling those numbers and not consistently getting through to Wellington. This is likely to have had a detrimental impact on Wellington's business.

¹⁷⁵ See Document 010 of the Evidence Bundle and http://www.tubesupplies.co.uk/index_01.php [accessed on 29 August 2018] (Document 080 of the Evidence Bundle).

- 6.17 Cloud M's contraventions have also placed a considerable administrative burden on Wellington, MFTS as Gaining Provider and Gamma as the Gaining CNP. Submitting the porting request repeatedly, plus the associated correspondence between MFTS and Cloud M and other suppliers within the chain,¹⁷⁶ is likely to have taken up a considerable amount of time and caused each of them inconvenience.
- 6.18 As noted above, Cloud M's contraventions of GC18.1 and GC18.5 prevented Wellington from deriving the benefits of its switch to MFTS, which may have been a better value for money, higher quality services and/or improved customer care.

The extent to which the contravention was deliberate or reckless

- 6.19 We note at the outset of this assessment that CPs such as Cloud M are expected to know and understand their obligations under the General Conditions of Entitlement, including the obligation to provide Number Portability and Portability under GC18.
- 6.20 We consider that Cloud M's conduct, which resulted in the contraventions, was deliberate or reckless. Considering first the contraventions we have found of GC18.1 and GC18.5, according to the evidence Ofcom has been provided, Cloud M was fully aware that Wellington was taking steps to initiate porting of the Numbers.¹⁷⁷ There are numerous documents evidencing that Cloud M received the Relevant Porting Request¹⁷⁸ and proactively took steps to cancel the repeated request by issuing clear instructions to reject to its supplier Broadsoft.¹⁷⁹ Accordingly, we consider that Cloud M acted consciously and intentionally to reject the Relevant Porting Request.
- 6.21 Cloud M has submitted that the Relevant Porting Request was rejected¹⁸⁰ because it did not believe Wellington was the legitimate end-user of the Numbers or that it had the right to port the numbers as Wellington had only ever 'rented' the Numbers from Cloud M. Cloud M's communications with Broadsoft are in line with this submission.¹⁸¹
- 6.22 We have considered the former submission in Section 4¹⁸² and concluded that Cloud M knew that Wellington was the user of the Numbers at the time the porting request was made, so this could not have motivated the rejection of the Relevant Porting Request.
- 6.23 We have also considered the latter submission in paragraphs 5.36 to 5.41 and noted that it is based on a misunderstanding by Cloud M of the regulatory framework.

¹⁷⁶ See paragraphs 4.32 to 4.50.

¹⁷⁷ See, for example, the email from Cloud M to Wellington referenced at paragraph 4.25, which acknowledged the porting request, and Wellington's response referenced at paragraph 4.26 that expressly requested that Cloud M did not attempt to stop the ports. See further evidence referenced at paragraphs 4.31.

¹⁷⁸ See, for example, paragraphs 4.25 and 4.28.

¹⁷⁹ See evidence referred to in paragraphs 4.29, 4.39 and 4.43.

¹⁸⁰ We note that Cloud M claims that Broadsoft were responsible for the rejections, although we dismiss this claim – see paragraphs 5.61 to 5.64.

¹⁸¹ See evidence referred to at paragraph 4.29 where it claims its reason for rejection is "Incorrect company requesting ports number not owned by Wellington Engineering... Owner of these numbers is the company Myconnectanywhere based in Newbury, Berkshire. NOT Wellington Engineering". See further evidence referenced at paragraphs 4.39 and 4.43 above.

¹⁸² See paragraphs 4.65 to 4.72.

- 6.24 Our conclusion, set out in paragraphs 5.53 to 5.56 above, is that Cloud M rejected the porting requests because it was following its policy to reject porting requests from Subscribers with outstanding balances, despite being expressly prohibited in the Manual. Given this, we consider that Cloud M either would or should have known blocking the Relevant Porting Request would breach GC18 and therefore, Cloud M deliberately or recklessly rejected the Relevant Porting Request.
- 6.25 Having concluded that Cloud M deliberately or recklessly rejected the Relevant Porting Request, it follows that Cloud M would or should have known that reasonable compensation was likely to be due as a result of its actions. However, to date Cloud M has failed to pay Wellington the compensation it was due under GC18.9, from the date of the first rejection. Consequently, we consider this contravention also occurred deliberately or, at the very least, recklessly.
- 6.26 Similarly, we consider that Cloud M would or should have known that it was obliged under GC18.10 to set out in a clear, comprehensive and easily accessible form how Wellington could (and can) access the compensation provided for under GC18.9 and how any compensation would be paid. We note that the evidence suggests that the text on Cloud M's website concerning rights to claim compensation from Cloud M was likely to mislead its customers.¹⁸³ Cloud M also included a term in its latest terms and conditions which purported to limit the circumstances in which a claim for compensation could be made.¹⁸⁴ Given that Cloud M ought to have known that these were inaccurate, we therefore consider that this contravention also occurred deliberately or, at the very least, recklessly.

Whether the contravention continued once Cloud M became aware of it

- 6.27 Ofcom contacted Cloud M in connection with MFTS' complaint on 29 November 2017, setting out details of MFTS' complaint.¹⁸⁵ In this email, Ofcom explicitly reminded Cloud M of their obligations under GC18 and, in particular, noted that:
- a) CPs are not permitted to refuse portability on the basis that they have a contractual dispute about unpaid invoices;
 - b) GC18 requires that CPs provide portability on reasonable terms and conditions, including charges; and
 - c) it is only the end-user of a number, i.e. a Subscriber, who has the right to Number Portability under GC18, and that Ofcom had been provided with evidence that Wellington had been the Subscriber of the Numbers since July 2013.

¹⁸³ See Document 058 of the Evidence Bundle.

¹⁸⁴ See paragraph 5.89.

¹⁸⁵ Email from Sheryl Willson of Ofcom to [redacted] of Cloud M at 09:44 on 29 November 2017 (Document 066 of the Evidence Bundle).

Cloud M responded to Ofcom's email on the same day to explain that it did not consider it was in breach of its obligations under GC18.¹⁸⁶ Accordingly, Cloud M has taken no action to remedy the contraventions identified in this document.

- 6.28 Even if Cloud M did not consider that its actions constituted a breach of GC18 when it rejected the requests, it should have been left in no doubt that it was considered a contravention by Ofcom once it received Ofcom's email on 29 November 2017. Consequently, we consider that the email should have prompted it to cease the contraventions. Accordingly, it is an aggravating factor in this case that Cloud M continued to contravene GC18 after this email.

The extent of senior management knowledge

- 6.29 Information from Companies House lists [X] as the Director of Cloud M Limited from 10 November 2015 until 22 July 2018, and he was the managing director of Cloud M during the Relevant Period.¹⁸⁷
- 6.30 We consider that [X] has been directly involved in the actions and inactions resulting a contravention of GC18.1 and GC18.5. We note, in particular, that:
- Wellington's and MFTS' engagement with Cloud M was almost exclusively with [X];¹⁸⁸
 - [X] was directly aware of Wellington's request to port the Numbers away from Cloud M;¹⁸⁹ and
 - [X] was aware of the actions taken by Cloud M, having personally sent messages to Broadsoft relating to Wellington's porting request and afterwards.¹⁹⁰
- 6.31 We therefore consider that [X], as the senior officer of Cloud M, was aware of the contraventions and also actively involved in communications which lead to the rejection of the Relevant Porting Request. We consider this active involvement to be an aggravating factor in determining the level of penalty.

Cloud M's size and turnover

- 6.32 Section 97 of the Act provides that the amount of a penalty notified under section 96A may be such amount not exceeding ten per cent of the notified person's turnover for relevant business for the relevant period as Ofcom determine to be appropriate and proportionate to the contravention for which it is imposed. In this investigation, the relevant business is Cloud M Limited (company number 09864608). We have taken the relevant period in this

¹⁸⁶ Email from [X] of Cloud M to Sheryl Willson of Ofcom at 17:01 on 1 December 2017 (Document 067 of the Evidence Bundle).

¹⁸⁷ See Document 066 of the Evidence Bundle.

¹⁸⁸ See Documents 35, 52, 53 and 54 of the Evidence Bundle.

¹⁸⁹ See the evidence referenced at paragraph 4.25 above.

¹⁹⁰ See Document 011 of the Evidence Bundle. In particular, see messages on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 - support@cloudmsolutions.co.uk at 16:12 on 6 November 2017 (p19), at 15:35 on 13 November 2017 (p16) and at 15: on 20 November 2017.

case to be the last full financial year before the Notification, meaning the appropriate reference period is the 2017/2018 financial year.

6.33 The Penalty Guidelines also add:

“1.6 A relevant factor in securing this objective of deterrence is the turnover of the regulated body subject to the penalty. Penalties should be set at levels which, having regard to that turnover, will have an impact on the body that deters it from misconduct in future and which provides signals to other bodies that misconduct by them would result in penalties having a similar impact. That is, it must be at a level which can also change and correct any non-compliant behaviour, or potential non-compliant behaviour, by other providers.

“[...]

“1.9 This is not to say there is a direct linear relationship between the size and turnover of the regulated body and the level of the penalty. While a body with a larger turnover might face a larger penalty in absolute terms, a body with a smaller turnover may be subject to a penalty which is larger as a proportion of its turnover, for example. We will impose the penalty which is appropriate and proportionate, taking into account all the circumstances of the case in the round together with the objective of deterrence.”¹⁹¹

6.34 Ofcom requested Cloud M to provide relevant financial information in its information request dated 28 June 2018. Cloud M acknowledged receipt of this information request but submitted that it did not have the relevant financial information available. As a result, in order to take account of Cloud M’s size and turnover in determining an appropriate and proportionate level of penalty in this case, Ofcom has had to have recourse to the latest information available in the public domain about Cloud M’s financial position.

6.35 On 11 December 2017 Cloud M submitted to Companies House micro-entity accounts as at 30 November 2016. In order to qualify as a micro-entity, a company must satisfy two or more of the following statutory requirements:

- a) its turnover cannot be more than £632,000;
- b) its balance sheet total cannot be more than £316,000; and
- c) its number of employees cannot be more than ten.¹⁹²

6.36 We therefore reasonably consider Cloud M’s turnover for relevant business for the relevant period was no higher than £632,000.

6.37 These micro-entity accounts show Cloud M’s assets at that time as £8,999. The accounts also show Cloud M as having capital and reserves at that time of -£32,514.

¹⁹¹ Penalty Guidelines, paragraph 1.6 – 1.9.

¹⁹² Companies Act 2006, section 384A(4).

Relevant precedents

6.38 Ofcom recently concluded an investigation into GW Telecom Limited (“Gateway”) in relation to its compliance with GC18.¹⁹³ Ofcom imposed a penalty on Gateway of £20,000 and ordered Gateway to pay £1,000 compensation to the relevant customer after finding that Gateway had contravened GC18.1, GC18.5, GC18.9 and GC18.10. Given that the Gateway investigation considered the same General Condition that is under review in this investigation and that the nature of the breaches were similar, we have had regard to the level of penalty imposed on Gateway when setting the level of penalty in this case.¹⁹⁴

Conclusion on penalty amount

6.39 Considering all of the above factors equally and in the round, the penalty we have decided to impose on Cloud M is £50,000.

6.40 Ofcom considers that this level of penalty is appropriate and proportionate to the contraventions in respect of which it is imposed. Ofcom’s objectives in setting it are:

- to impose an appropriate and proportionate sanction that reflects the serious nature of Cloud M’s contraventions of GC18; and
- to incentivise Cloud M and other CPs to ensure they are complying with their regulatory obligations, particularly GC18, at present and on an ongoing basis.

6.41 Ofcom considers that this penalty will secure these objectives in a proportionate way. It reflects each of the factors described in more detail above and in particular takes into account the:

- limited information Ofcom has about Cloud M’s financial position;
- importance of GC18;
- level of harm caused to the consumer by Cloud M’s actions; and
- length, seriousness and deliberate or reckless nature of the contravention.

Remedies

6.42 A notification under section 96A(2) of the Act must specify any steps that Ofcom considers should be taken by the person to comply with the relevant condition and remedy the consequences of a contravention. We have therefore considered what steps Cloud M should take to come into compliance with GC18 and remedy the consequences of its contraventions which we have found.

6.43 We consider that Cloud M should take all necessary steps, in line with the industry agreed processes, to enable the complete porting of the Numbers to MFTS within one week of the date of this document.

¹⁹³ See https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01195.

¹⁹⁴ See paragraph 6.17 above.

- 6.44 As we have concluded that there has been an abuse of the porting process, we consider it is now appropriate for Cloud M to pay Wellington reasonable compensation.
- 6.45 In determining this sum, we have taken account of the factors set out below:
- The damage caused to Wellington by loss of its key business numbers during a period exceeding ten months;
 - The inconvenience and frustration suffered by Wellington due to Cloud M’s conduct in obstructing the porting request; and
 - The length of time that has elapsed since Wellington’s porting request.
- 6.46 Taking these factors together, we direct Cloud M to pay reasonable compensation of £1,000 to the Customer within two weeks of the date of this document.¹⁹⁵
- 6.47 It is important to note that all communications providers (or all communications providers of a particular description) are required to comply with the revised General Conditions, as of 1 October 2018. Ofcom therefore expects Cloud M to ensure that all its contractual documentation and all the information it provides to third parties is in accordance with and not contrary to, the revised General Conditions, in particular Condition B3 relating to Number Portability.

¹⁹⁵ Our May 2011 statement called for an industry-wide compensation scheme to be implemented by industry. This has not emerged. In the absence of such a scheme, our view, as set out in our May 2011 statement was that “each CP should be able to comply with the requirement to provide compensation for delays or abuse of porting through its standard complaint handling channels on a case by case basis in the first instance” (paragraph 10.102). We remain of this view, and so consider Cloud M is responsible for the compensation in this instance. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0027/37746/statement.pdf

7. Assessment of contravention of section 135 of the Communications Act 2003 and penalty

- 7.1 As noted above, on 2 January 2018 Ofcom opened an investigation into Cloud M’s compliance with GC18. This investigation sought to establish whether there were reasonable grounds to believe that Cloud M had contravened GC18 and as part of our investigation we issued information requests to a number of parties, including Cloud M. The information requests issued to Cloud M were as follows:
- a) Section 135 Notice dated 8 March 2018 (the “First Notice”);
 - b) Section 135 Notice dated 26 April 2018 (the “Second Notice”); and
 - c) Section 135 Notice dated 25 May 2018 (the “Third Notice”);
- (together, the “Notices”).
- 7.2 This section sets out our reasons, including the evidence on which we rely, for concluding that Cloud M has contravened requirements imposed under s135 of the Communications Act 2003 (the “Act”) when responding to the Notices.

Our requests for information from Cloud M

The First Notice

- 7.3 The First Notice sought information about, among other things, the porting request made by Wellington and Cloud M’s actions following this porting request. The deadline for Cloud M to provide the information to Ofcom was 17:00 on 22 March 2018, although, following a request from Cloud M, Ofcom granted Cloud M an extension to this deadline to 09:00 on 23 March 2018.
- 7.4 Cloud M provided its response to Ofcom on 22 and 23 March 2018 (the “Cloud M First Response”).

The Second Notice

- 7.5 The Second Notice sought to clarify issues that had arisen as a result of information supplied by Cloud M in the Cloud M First Response. The deadline for Cloud M to provide the information to Ofcom was 17:00 on 11 May 2018.

- 7.6 On 9 May 2018 Ofcom reminded Cloud M of the deadline for responding to the Second Notice,¹⁹⁶ but no information was provided by Cloud M in response to the Second Notice before the deadline.
- 7.7 On 14 May 2018 Ofcom and Cloud M exchanged emails about the Second Notice:
- at 08:35, Cloud M emailed Ofcom to request confirmation of receipt of the information requested under the Second Notice. Cloud M alleged that the information had been sent via its legal advisers on 11 May 2018;¹⁹⁷
 - at 08:58, Ofcom emailed Cloud M to confirm that no information had yet been received in response to the Second Notice;¹⁹⁸
 - at 09:29 Cloud M responded claiming that it had been sent to Ofcom at 11:01 on 11 May 2018;¹⁹⁹ and
 - at 09:41, Ofcom asked Cloud for permission to contact the legal advisers that had allegedly sent information to us and pointed out that Cloud M was in breach of the Second Notice by not responding to it.²⁰⁰ Cloud M did not respond to this email.
- 7.8 On 17 May 2018 Ofcom suggested to Cloud M that, to support its claim that it provided the information before the deadline on 11 May 2018, Cloud M should consider providing the information in hard copy by post and including with it a copy of the email on 11 May 2018 in which Cloud M or its legal advisers provided the information.²⁰¹
- 7.9 On 18 May 2018 Cloud M provided its response to the Second Notice (the “Cloud M Second Response”).²⁰²

The Third Notice

- 7.10 The Third Notice related to a separate complaint Ofcom had received from Woods Foodservice Limited (“Woods Foodservice”) that also raised issues regarding Cloud M's compliance with GC18. Ofcom therefore decided it was appropriate to issue the Third Notice as part of the existing investigation.²⁰³ The deadline for Cloud M to provide the information to Ofcom was 17:00 on 4 June 2018.

¹⁹⁶ Email from Menachem Grunewald of Ofcom to [redacted] of Cloud M at 20:25 on 9 May 2018 (Document 059 of the Evidence Bundle).

¹⁹⁷ Email from [redacted] of Cloud M to Menachem Grunewald of Ofcom at 08:35 on 14 May 2018 (Document 060 of the Evidence Bundle).

¹⁹⁸ Email from Menachem Grunewald of Ofcom to [redacted] of Cloud M at 08:58 on 14 May 2018 (Document 060 of the Evidence Bundle).

¹⁹⁹ Email from [redacted] of Cloud M to Menachem Grunewald of Ofcom at 09:29 on 14 May 2018 (Document 060 of the Evidence Bundle).

²⁰⁰ Email from Menachem Grunewald of Ofcom to [redacted] of Cloud M at 09:41 on 14 May 2018 (Document 061 of the Evidence Bundle).

²⁰¹ Email from Menachem Grunewald of Ofcom to [redacted] of Cloud M at 09:08 on 17 May 2018 (Document 062 of the Evidence Bundle).

²⁰² Email from [redacted] of Cloud M to Menachem Grunewald of Ofcom at 10:47 on 18 May 2018 (Document 063 of the Evidence Bundle).

²⁰³ See the update note of 28 June 2018 on the entry of Ofcom’s Competition and Consumer Enforcement Bulletin about the Investigation - https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01211.

7.11 At 17:01 on 4 June 2018 Cloud M emailed Ofcom as follows:²⁰⁴

“This is [sic] become a which [sic] hunt against Cloud M [sic] this woods food issue is an iss [sic] under investigation with the police as [Person A at Woods Foodservice] is being investigated for fraud and it explicitly [sic] states I [sic] ofcom regultions [sic] that when there is an ilegal [sic] act then ofcom have no remit [sic] over this [sic]. Therefore once the legal process is complete [sic] then ofcom [sic] will be in better position to investigate this.”

7.12 On 6 June 2018 Ofcom replied to Cloud M as follows:²⁰⁵

“We do not consider that any ongoing police investigation affects the validity of the information request we sent Cloud M on 25 May 2018, the deadline for which has now passed. [...] I would urge you to respond as soon as possible to the third information request.”

7.13 As at the date of this document, Cloud M has yet to respond to the Third Notice.

Cloud M’s compliance with the First Notice

7.14 Cloud M responded to the First Notice on 22 and 23 March 2018, in accordance with the stipulated deadline (as extended with Ofcom’s consent). However, information provided by other parties has satisfied us that Cloud M contravened a requirement imposed under section 135 of the Act when responding to this notice by not providing full and accurate information. We set out below our reasons for reaching this conclusion.

Information relating to the porting request

7.15 Question 3 of the First Notice reads as follows:²⁰⁶

“Please:

3. Provide a copy of any porting requests received by Cloud M in respect of porting the Numbers from Cloud M to MFTS. Please also include copies of any supporting information you received from any of the companies set out below in relation to any such porting request:

- a. MFTS;*
- b. Wellington Engineering;*
- c. Wellington Tube;*
- d. Gamma;*
- e. BT; and*
- f. Broadsoft.”*

²⁰⁴ Email from [redacted] of Cloud M to Menachem Grunewald of Ofcom at 17:01 on 4 June 2018 (Document 064 of the Evidence Bundle).

²⁰⁵ Email from Menachem Grunewald of Ofcom to [redacted] of Cloud M at 09:09 on 6 June 2018 (Document 065 of the Evidence Bundle).

²⁰⁶ First Notice (Document 071 of the Evidence Bundle).

7.16 In response, Cloud M submitted (in part):²⁰⁷

“Cloud M Limited have not received any porting requests from anyone concerning these numbers as we do not deal with export request [sic]. We only get notifications from Broadsoft if a number/s are to be exported away.”

No further supporting information was provided in response to this question.

7.17 Furthermore, question 4 of the First Notice reads as follows:

“Please:

4. Provide any correspondence (including but not limited to emails, letters, facsimiles, records of telephone calls or meetings, or other communications) received by Cloud M relating to any request(s) by Wellington Engineering and/or Wellington Tube to port the Numbers, over the period 1 October 2017 to date, between Cloud M and any of:

- a. MFTS;*
- b. Wellington Engineering;*
- c. Wellington Tube;*
- d. Gamma;*
- e. BT; and*
- f. Broadsoft.*

7.18 In response, Cloud M submitted:²⁰⁸

“The [sic] was no correspondence by Cloud M relating to any request(s) by Wellington Engineering and/or Wellington Tube to port these three numbers included in this investigation.”

7.19 However, contrary to these responses from Cloud M, in response to an information request sent to Broadsoft, we received copies of 62 messages exchanged between Broadsoft and Cloud M on a customer service portal known as HIPCOM.²⁰⁹ Each of these messages related directly to request(s) by Wellington to port the Numbers and appear to be directly responsive to both questions 3 and 4 of the First Request.

7.20 Moreover, in response to an information request sent to Wellington Engineering we received a copy of the following email from Cloud M to Wellington Engineering, in which Cloud M acknowledged that it had received a porting request (emphasis added):²¹⁰

*“We had a call last week from your new supplier [sic] for your phone system and **we have received a number porting request** to move over on the 13/11/17 19.45hrs. (please see below)*

Therefore please can you confirm the new suppliers [sic] company name and a contact

²⁰⁷ Document 051 of the Evidence Bundle.

²⁰⁸ Document 072 of the Evidence Bundle.

²⁰⁹ See Document 011 and the messages on HIPCOM Ticketing system (Broadsoft/Cloud M) posted by Breeze 8 – support@cloudmsolutions.co.uk, [redacted], [redacted] and [redacted] between 11:43 on 3 November 2017 and 14:59 on 28 March 2018.

²¹⁰ Email from [redacted] (Managing Director, Cloud M) to [redacted] (Wellington Engineering) on 6 November 2018 at 13:14 (Document 024 of the Evidence Bundle).

of a person our support team can contact before the 13/11/17 to ensure [sic] we have the require [sic] information to allow the switch to take place and ensure the switch to them goes smoothly.

Also since your phone system is currently [sic] suspended please could supply us with another contact number for yourself.

Many Thans [sic]

James

Good Morning,

We have received the below email from the Export team:

An export request has been received to port the following Installations:

02085810061

02085810062

02085819434

02082305708

Order Type RTA

Customer required by date and time is 13/11/17 19.45hrs

If order type is RTA the port will take place anytime between CRD and CRD + 7 working days

If order type is FIXED the port will take place on CRD as shown above

Any cancellation of transfer must be received by 10/11/17 14:00hrs

Kind Regards,

Number Management"

- 7.21 In our view, these communications illustrate that:
- a) Cloud M received a porting request from Broadsoft in respect of the porting of the Numbers and that Cloud M did not provide this information to us, despite it being within the scope of question 3 of the First Notice; and
 - b) Cloud M received and engaged in correspondence relating to the requests by Wellington to port the Numbers and that Cloud M did not provide this information to us, despite it being within the scope of question 4 of the First Notice.
- 7.22 We consider that the communications above demonstrate that Cloud M knew of the existence of the information Ofcom required under the First Notice. It follows from this that either (i) Cloud M held some or all of this information, in which case it should have been provided in its response to the First Notice, or (ii) Cloud M did not hold the information, in which case it should have explained in its response to the First Notice that while it was aware of the existence of responsive information which it had held, it no longer held the information.
- 7.23 Accordingly, we consider that Cloud M contravened the First Notice by not providing information that fell within the scope of questions 3 and 4.

Invoices relating to any Portability requests

7.24 Question 8 of the First Notice reads as follows:

“Please:

6. Provide copies of all:

a. bills, invoices or demands for payment issued between 1 October 2017 to date by Cloud M to Wellington Engineering and/or Wellington Tube relating to any porting request(s) in respect of the Numbers.”

7.25 In response, Cloud M wrote: (emphasis added)

“I again want to make this clear Cloud M Limited policy, is and always will be that we do not issue invoices until a minimum of 30 days after a [sic] export has been successfully completed. This avoids any issues regarding outstanding balances and number porting.

Therefore there are no bills, invoices or demands for payment or correspondence regarding this because no invoices have been raised.

However we have been made aware by Ofcom there is two invoice [sic] claiming to from [sic] Cloud M to Wellington totalling £83,345.10, £72,000 of which appear to be for porting charges and 'Porting Violation' charges.

*On 01/12/2017 17:01 I requested a copy of these from Ofcom I still have not receive [sic] them however **I can ensure [sic] you that no invoices have been issues [sic] regarding these 3 numbers.”***

7.26 As noted by Cloud M, Ofcom had received two invoices from Wellington in Wellington’s response to an information request. These invoices, allegedly from Cloud M, had following items listed on them:

- Invoice #10916 to WEC:

<i>Qty</i>	<i>Description</i>		<i>Total</i>
2	CloudM Porting Charge (02085810061 & 02085810062)	£10,000	£20,000
2	Contract – Porting Violation (Refer: Appendix 2 – Ownership)	£5,000	£10,000”

- Invoice #10917 to WTS:

<i>Qty</i>	<i>Description</i>		<i>Total</i>
2	CloudM Porting Charge (02085819434 & 02082305708)	£10,000	£20,000
2	Contract – Porting Violation (Refer: Appendix 2 – Ownership)	£5,000	£10,000”

7.27 Cloud M claims that these invoices are not genuine, which is why they were not provided in response to the First Notice. On balance, however, we consider that these invoices are to be genuine Cloud M invoices (for the reasons set out at paragraphs 4.52 to 4.64 above).

- 7.28 It follows from this that either (i) Cloud M held some or all of these invoices, in which case it should have provided such invoices in its response to the First Notice, or (ii) Cloud M did not hold the invoices, in which case it should have explained in its response to the First Notice that while it was aware of the existence of responsive information which it had held, it no longer held the information.
- 7.29 Accordingly, we consider that Cloud M contravened the First Notice by not providing information that fell within the scope of question 6.

Cloud M's compliance with the Second Notice

- 7.30 As noted above, the deadline given to Cloud M to respond to the Second Notice was 11 May 2018, but the information was only provided by Cloud M on 18 May 2018.
- 7.31 We note Cloud M's assertion that its legal advisers attempted to submit the required information to Ofcom at 11:01 on 11 May 2018. As noted above, on 16 May 2018 Ofcom invited Cloud M to provide evidence of this attempted submission, but to date, Cloud M has failed to provide any such evidence. In addition, Ofcom invited Cloud M to submit the required information by hard copy, which was not received.
- 7.32 In the light of Cloud M's failure to provide evidence that it attempted to submit the required information in advance of the stipulated deadline, we cannot accept Cloud M's assertion that it attempted to provide the information.
- 7.33 Accordingly, we consider that Cloud M contravened the Second Notice by not providing the information in accordance with the stipulated deadline.

Cloud M's compliance with the Third Notice

- 7.34 As noted above, the deadline given to Cloud M to respond to the Third Notice was 17:00 on 4 June 2018. As at the date of this document, Cloud M has not responded to the Third Notice.
- 7.35 We understand that Cloud M's justification for not responding to the Third Notice was that it related to an issue which was separately under investigation by the police.
- 7.36 We consider that the requested information was relevant to the matters under investigation. Cloud M has not produced any evidence of a police investigation nor explained on what basis this would entitle it to withhold information required under section 135 of the Act. We do not consider that any ongoing police investigation (of whose existence we have no evidence) can affect the validity of the Third Notice or the requirement on Cloud M to comply with it.
- 7.37 Accordingly, we consider that Cloud M contravened the Third Notice by not providing the information in accordance with the stipulated deadline.

Conclusion on contravention

7.38 In the light of the reasoning set out above, we consider that Cloud M contravened certain requirements imposed under s135 of the Act in the First, Second and Third Notice.

Penalty for contravention of section 135 of the Act

7.39 We consider that it is appropriate to impose a penalty in relation to the contraventions by Cloud M of the information requirements imposed under section 135 of the Act.

7.40 Section 139 of the Act specifies the penalties that may apply for contravention of the information requirements. Section 139(5) provides that a penalty for a contravention of the information requirements (other than in respect of a continuing contravention) is to be an amount not exceeding £2,000,000 as Ofcom determine to be both (a) appropriate and (b) proportionate to the contravention in respect of which it is imposed.

7.41 Where there is a continuing contravention, section 139(4) provides that no more than one penalty may be specified in respect of the period of contravention specified in the notification. However, under section 139(4A), a penalty may be specified in respect of each day on which the contravention continues after the giving of a confirmation decision under section 139A(4)(c) that requires immediate action, or the expiry of a period specified in the confirmation decision for complying with a requirement set out in it. The amount of any daily penalty specified for a contravention that continues beyond this point is, under section 139(4B) to be such amount not exceeding £500 per day as Ofcom determine to be (a) appropriate; and (b) proportionate to the contravention in respect of which it is imposed.

7.42 We have decided to impose a penalty on Cloud M of £5,000 for its failure to comply with its obligations under the Notices. Whereas we would be able to impose a separate penalty in relation to each Notice, we consider it is more appropriate and proportionate to impose a single penalty that applies to the contraventions together.

7.43 We have also decided to require Cloud M to pay a daily penalty of £100 for each day (capped at £3,000) that the contravention in relation to the Third Notice continues after the date of this document. In considering this penalty, we have had regard to Ofcom's Penalty Guidelines. We consider that this figure, and the daily rate for continued contravention, is appropriate and proportionate for the following reasons.

7.44 Ofcom's powers under section 135 of the Act are crucial to Ofcom's ability to regulate the communications sector. They enable Ofcom to obtain the information it requires to carry out its functions and to fulfil its principal duty of furthering the interests of citizens and consumers.

7.45 Where parties contravene these requirements, Ofcom is at risk of being prevented from exercising its functions in the interests of citizens and consumers because of the asymmetry of information that exists: much of the information which it requires is held by communications providers that it regulates. Accordingly, Ofcom considers that a

contravention of a requirement to provide information under section 135 of the Act is a serious matter as it hinders Ofcom's ability to carry out its functions and more generally has the potential to undermine the integrity of the regulatory regime, thereby harming citizens and consumers.

- 7.46 Furthermore, Ofcom's Penalty Guidelines explain that the central objective of imposing a penalty is deterrence. As a general matter, we are of the view that the need for deterrence in any penalty set for a contravention of information requirements is important as information requests are fundamental to Ofcom's ability to regulate electronic communications networks and services under the Act effectively and in a timely manner, and Ofcom needs to be able to rely on responses to them.
- 7.47 Ofcom's usual approach is to consider the size and turnover of the company on which it is proposing to impose a penalty for the purposes of determining whether the level of penalty is appropriate and proportionate. Ofcom requested Cloud M to provide relevant financial information in its information request dated 28 June 2018. Cloud M acknowledged receipt of this information request but submitted that it did not have the relevant financial information available. As a result, in order to take account of Cloud M's size and turnover in determining an appropriate and proportionate level of penalty in this case, Ofcom has had to have recourse to information available in the public domain about Cloud M Limited's financial position.
- 7.48 Companies House shows Cloud M Limited's micro-entity accounts made up to 30 November 2016. These show Cloud M's assets at that time as £8,999. The accounts also show Cloud M as having capital and reserves at that time of -£32,514.
- 7.49 Taking all of these factors into account, we consider a penalty of £5,000, together with £100 per day (capped at £3,000) for each day of continued contravention after the date of this document is appropriate and proportionate, given the seriousness of the contraventions, the potential harm to consumers and citizens, Cloud M's size and financial position and Ofcom's central objective of deterring further contraventions.

A1. Confirmation Decision issued to Cloud M under section 96C of the Communications Act 2003 of contraventions of General Condition 18

Section 96C of the Communications Act 2003

A1.1 Under section 96C of the Communications Act 2003 (the “Act”), Ofcom may issue a decision (a “96C Confirmation Decision”) confirming the imposition of requirements on a person, or the giving of a direction to the person, or both, in accordance with the notification under section 96A²¹¹. This applies where that person has been given a notification under section 96A of the Act, Ofcom has allowed that person an opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. Ofcom may not give a 96C Confirmation Decision to a person unless, having considered any representations, it is satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.

A1.2 A 96C Confirmation Decision:

- a) must be given to the person without delay;
- b) must include the reasons for the decision;
- c) may require immediate action by the person to comply with the requirements of a kind mentioned in section 96A(2)(d) of the Act,²¹² or may specify a period within which the person must comply with those requirements; and
- d) may require the person to pay:
 - i) the penalty specified in the notification issued under section 96A of the Act, or
 - ii) such lesser penalty as Ofcom consider appropriate in light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention,and may specify the period within which the penalty is to be paid.

²¹¹ Under section 96A of the Act, Ofcom may issue a notification to a person about whom they have reasonable grounds to believe is contravening, or has contravened, a condition (other than an SMP apparatus condition) set under section 45 of the Act.

²¹² Such requirements include those steps that Ofcom thinks should be taken by the person in order – (i) comply with the condition; (ii) remedy the consequences of a contravention.

General Condition 18

- A1.3 Section 45(1) of the Act gives Ofcom power to set conditions, including General Conditions (“GCs”), which are binding on the person to whom they are applied.
- A1.4 On 22 July 2003, shortly before the coming into force of the relevant provisions of the Act, the Director General of Telecommunications (the “Director”) published a notification in accordance with section 48(1) of the Act entitled ‘*Notification setting general conditions under section 45 of the Communications Act 2003*’.²¹³ Under Part II of the Schedule to that notification, the Director set (among others) General Condition 18 (“GC18”), which took effect on 25 July 2003.²¹⁴
- A1.5 On 29 December 2003, Ofcom took over the responsibilities and assumed the powers of the Director, and notifications made by the Director are to have effect as if made by Ofcom under the relevant provisions of the Act.
- A1.6 The relevant sections of GC18,²¹⁵ for the purposes of this 96C Confirmation Decision, require that:

“18.1 The Communications Provider shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges, to any of its Subscribers who so request.

[...]

18.5 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms...

[...]

18.9 Where Communications Providers delay the porting of a Telephone Number for more than one business day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.

18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers can access the compensation

²¹³ Available at:

http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/cond_final0703.pdf.

²¹⁴ A consolidated version of the General Conditions is available at:

http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/GENERAL_CONDITIONS_22Sept2014.pdf.

²¹⁵ GC18 was amended by Ofcom on 26 May 2011 following EU revisions made to article 23 of Directive 2002/22/EC (the Universal Services Directive). GC18 has not been subsequently revised prior to the apparent breach.

provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber.”

- A1.7 It should be noted, however, that on 1 October 2018, revised General Conditions came into force including requirements in relation to Portability and Number Portability which are set out in Condition B3.²¹⁶ Accordingly, as of 1 October 2018, all communications providers (or all communications providers of a particular description) must comply with the revised General Conditions.
- A1.8 Sections 96A to 96C of the Act give Ofcom the powers to take action, including the imposition of penalties, against persons who contravene, or have contravened, a condition set under section 45 of the Act.

Subject of this 96C Confirmation Decision

- A1.9 This 96C Confirmation Decision is addressed to Cloud M Limited (“Cloud M”), whose registered company number is 09864608. Cloud M’s registered office is PO Box VENTUR4, Oxford House, 12-20 Oxford Street, Newbury, England, RG14 1JB.

Notification given by Ofcom

- A1.10 On 17 September 2018 Ofcom issued Cloud M with a notification under section 96A of the Act (the “96A Notification”), as Ofcom had determined that there were reasonable grounds for believing that Cloud M had contravened and was continuing to contravene GC18. Specifically, for the reasons explained in the document accompanying the 96A Notification, Ofcom set out that:
- a) between 3 November 2017 and the date of the 96A Notification, Cloud M had failed to:
 - i) provide Portability as soon as was reasonably practicable by rejecting a porting request on three occasions;
 - ii) provide Number Portability to Wellington Engineering Co. Limited and Wellington Tube Supplies Limited (together, “Wellington”) in the shortest possible time and on reasonable terms and conditions (including charges) in respect of a porting request;
 - b) between 3 December 2017 and the date of the 96A Notification, Cloud M had failed to pay reasonable compensation to Wellington as soon as was reasonably practicable for an abuse of the number porting process; and
 - c) between 9 May 2013 and the date of the 96A Notification, Cloud M had failed to provide in a clear, comprehensive and easily accessible form for Wellington, how they could access such compensation and how any compensation would be paid.

²¹⁶ Ofcom, [General Conditions of Entitlement: Unofficial Consolidated Version](#), 30 July 2018.

96C Confirmation Decision given by Ofcom

- A1.11 Ofcom provided Cloud M with an opportunity to make representations about the matters notified. The period allowed for making representations has now expired and Cloud M did not provide any representations in response to the Notification. As such, for the reasons set out in the document accompanying this 96C Confirmation Decision, Ofcom is satisfied that Cloud M has, in the respects notified, been in contravention of GC18. Specifically, the reasons for the Ofcom's decision are that:
- a) between 3 November 2017 and the date of the 96A Notification, Cloud M had failed to:
 - i) provide Portability as soon as was reasonably practicable by rejecting a porting request on three occasions, contrary to GC18.5;
 - ii) provide Number Portability to Wellington Engineering Co. Limited and Wellington Tube Supplies Limited (together, "Wellington") in the shortest possible time and on reasonable terms and conditions (including charges) in respect of a porting request, contrary to GC18.1;
 - b) between 3 December 2017 and the date of the 96A Notification, Cloud M had failed to pay reasonable compensation to Wellington as soon as was reasonably practicable for an abuse of the number porting process, contrary to GC18.9; and
 - c) between 9 May 2013 and the date of the 96A Notification, Cloud M had failed to provide in a clear, comprehensive and easily accessible form for Wellington, how they could access such compensation and how any compensation would be paid, contrary to GC18.10.

Steps to be taken by Cloud M

- A1.12 The steps that Ofcom requires Cloud M to take to comply with the requirements of GC18 and remedy the consequences of the contraventions are to:
- a) take all necessary actions, in line with the industry agreed processes, to enable the complete porting of the Numbers to MFTS within one week of this 96C Confirmation Decision; and
 - b) pay reasonable compensation of £1,000 to the Wellington in light of what we have determined to be Cloud M's abuse of the porting process within two weeks of this 96C Confirmation Decision.
- A1.13 Within one of month of this 96C Confirmation Decision, Cloud M must provide confirmation to Ofcom that the above action has been completed.

Penalty

- A1.14 Ofcom requires Cloud M to pay a penalty of £50,000 in respect of its contraventions of GC18. This penalty must be paid by 17:00 on 30 January 2019.

Interpretation

A1.15 Words or expressions used in this 96C Confirmation Decision have the same meaning as in the GCs or the Act except as otherwise stated in this 96C Confirmation Decision.

A handwritten signature in black ink, appearing to read 'Brian Potterill', with a long horizontal flourish extending to the right.

Brian Potterill

Competition Policy Director

as decision maker for Ofcom

29 November 2018

A2. Confirmation Decision issued to Cloud M under section 139A of the Communications Act 2003 regarding contraventions of requirements under section 135 of that Act

Sections 139A of the Communications Act 2003

A2.1 Under section 139A of the Communications Act 2003 (the “Act”), Ofcom may issue a decision (a “139A Confirmation Decision”) confirming the imposition of requirements on a person, or the giving of a direction to the person, or both, in accordance with a notification under section 138 of the Act²¹⁷. This applies where a person has been given a notification under section 138, Ofcom has allowed that person an opportunity to make representations about the matters notified, and the period allowed for the making of representations has expired. Ofcom may not give a 139A Confirmation Decision to a person unless, having considered any representations, it is satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 138.

A2.2 A 139A Confirmation Decision:

- a) must be given to the person without delay;
- b) must include the reasons for the decision;
- c) may require immediate action by the person to comply with a requirement notified under section 138(2)(d) of the Act,²¹⁸ or may specify a period within which the person must comply with the requirement; and
- d) may require the person to pay:
 - i) the penalty specified in the notification under section 138 of the Act, or
 - ii) such lesser penalty as Ofcom consider appropriate in light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention,and may specify the period within which the penalty is to be paid.

²¹⁷ Under section 138 of the Act, Ofcom may issue a notification (a “Notification”) to a person whom Ofcom have reasonable grounds to believe is contravening, or has contravened, a requirement imposed under sections 135 of the Act.

²¹⁸ Section 138(2)(d) of the Act provides that a notification under section 138 is one which specifies what the person must do in order to comply with the requirement.

Section 135 of the Act

A2.3 Section 135 of the Act gives Ofcom the power to require the provision of information that it considers necessary for the purpose of carrying out particular functions under the Act.

A2.4 The relevant sections of section 135 are:

“(1) Ofcom may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their functions under-

[...]

(c) this Chapter.

(2) The persons falling within this subsection are—

(a) a communications provider;

[...]

(3) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require for any one or more of the following purposes—

(a) ascertaining whether a contravention of a condition or other requirement set or imposed by or under [Chapter 1 of the Act] has occurred or is occurring;

[...]

(4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.”

A2.5 Section 135(5) of the Act provides that the powers in section 135 are subject to the limitations in section 137. Section 137(3) provides that:

“OFCOM are not to require the provision of information under section 135 or 136 except—

(a) by a demand for the information that describes the required information and sets out OFCOM's reasons for requiring it; and

(b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

A2.6 Sections 138 to 144 of the Act give Ofcom the powers to take action, including the imposition of penalties, against persons who contravene, or have contravened, a notice given under section 135 of the Act.

Subject of this 139A Confirmation Decision

A2.7 This 139A Confirmation Decision is addressed to Cloud M Limited (“Cloud M”), whose registered company number is 09864608. Cloud M’s registered office is PO Box VENTUR4, Oxford House, 12-20 Oxford Street, Newbury, England, RG14 1JB.

Notification given by Ofcom

A2.8 On 17 September 2018 Ofcom issued Cloud M with a notification under section 138 of the Act, (the “138 Notification”) as Ofcom had determined that there were reasonable grounds for believing that Cloud M had contravened and was continuing to contravene requirements imposed under section 135 of the Act. Specifically, for the reasons set out in the document to which the 138 Notification was annexed, Ofcom had reasonable grounds to believe that Cloud M had contravened requirements within:

- a) the First Notice, dated 8 March 2018, by not providing information that fell within the scope of questions within the First Notice;
- b) the Second Notice, dated 26 April 2018, by not providing the information in accordance within the stipulated deadline; and
- c) the Third Notice, dated 25 May 2018, by not providing the information in accordance within the stipulated deadline.

139A Confirmation Decision given by Ofcom

A2.9 Ofcom provided Cloud M with an opportunity to make representations about the matters notified. The period for making such representations has now expired and Cloud M did not provide any representations in response to the 138 Notification.

A2.10 As such, for the reasons set out in the document accompanying this 139A Confirmation Decision, Ofcom is satisfied that Cloud M has, in the respects notified, been in contravention of requirements notified under section 138 and imposed under section 135 of the Act. The reasons for such decision are that Cloud M contravened requirements in respect of:

- a) the First Notice, dated 8 March 2018, by not providing information that fell within the scope of questions within the First Notice;
- b) the Second Notice, dated 26 April 2018, by not providing the information in accordance within the stipulated deadline; and
- c) the Third Notice, dated 25 May 2018, by not providing the information in accordance within the stipulated deadline.

Steps to be taken by Cloud M

A2.11 Ofcom requires Cloud M to comply with the Third Notice, dated 25 May 2018, by responding with the information requested.

Penalty

- A2.12 Ofcom requires Cloud M to pay a penalty of £5,000 in respect of its contraventions of requirements imposed under section 135 of the Act.
- A2.13 Ofcom also requires Cloud M to pay a daily penalty of £100 (capped at £3,000) for each day that Cloud M continues to contravene the requirement imposed under section 135 of the Act by failing to respond to the Third Notice, dated 25 May 2018.
- A2.14 These penalties must be paid by 17:00 on 30 January 2019.

Interpretation

- A2.15 Words or expressions used in this 139A Notification have the same meaning as in the Act except as otherwise stated in this 139A Notification.



Brian Potterill

Competition Policy Director

as decision maker for Ofcom

29 November 2018

A3. Index for Evidence Bundle

Document Number	Description	Provided to Ofcom by:
1	VM final invoice to WTS showing line rental for number ending 5708.	MFTS, BT, Gamma
2	VM final invoice to WEC showing line rental for numbers ending 9434 and 0061.	MFTS, BT, Gamma
3	Hosted Services Contract (WEC)	MFTS, Wellington, BT
4	Hosted Services Contract (WTS)	MFTS, Wellington, BT
5	Cloud M Ts and Cs (Dec 2012)	MFTS, Wellington, BT
6	CLOA to port numbers 9434 and 0061 to Cloud M	MFTS and Wellington
7	CLOA to port number 5708 to Cloud M	MFTS and Wellington
8	VM Response, Q1	VM
9	Broadsoft Response	Broadsoft
10	Email and attached spreadsheet from Cloud M following Wellington number audit	MFTS
11	Messages exchanges on HIPCOM Ticketing system for ticket LYA-893298	Broadsoft
12	August Invoice	MFTS
13	Demand re August Invoice	Wellington
14	Wellington CLOA	MFTS
15	Email confirming 25 numbers did port	MFTS
16	Wellington form confirming change of registered address	n/a
17	NPOR - 9434	Gamma
18	NPOR – 5708	Gamma
19	NPOR - 0061	Gamma
20	POV for porting request	Gamma, MFTS, BT
21	Automated notification of port request for 02085819434	Broadsoft
22	Automated notification of port request for 02082305708	Broadsoft

Confirmation decisions in the investigation into Cloud M Limited for failing to comply with GC18 and s135 of the Communications Act 2003

Document Number	Description	Provided to Ofcom by:
23	Automated notification of port request for 02085810061	Broadsoft
24	Emails exchanges to confirm porting request on 061107	Wellington and MFTS
25	Broadsoft relaying first cancellation to BT – 9434	Broadsoft
26	Broadsoft relaying first cancellation to BT – 5708	Broadsoft
27	Broadsoft relaying first cancellation to BT – 0061	Broadsoft
28	Gamma Response	Gamma
29	COT for 9434	Gamma
30	COT for 9434	Gamma
31	COT for 9434	Gamma
32	Rejection email – 0061	MFTS
33	Rejection email – 9434	MFTS
34	Rejection email – 5708	MFTS
35	Email exchange between Cloud M and Wellington on 101117	Wellington
36	Email from BT asking Broadsoft to authorise port	Broadsoft, BT
37	Email to BT rejecting attempt #3	Broadsoft, BT
38	BT confirming port cancellation	Broadsoft
39	MFTS Telecom Service Agreement (WTS)	MFTS
40	MFTS Telecom Service Agreement (WEC)	MFTS
41	MFTS T&Cs	MFTS
42	November Invoice – 0061 and 0062	Wellington
43	November Invoice – 9434 and 5708	Wellington
44	Email with November Invoices	Wellington
45	Note of Ofcom/MFTS call 250618	MFTS
46	Email from Cloud M to Ofcom 111217	Cloud M
47	Email from Cloud M to Ofcom 231117	Cloud M
48	Cloud M Ts and Cs (Feb 2017)	Cloud M

Confirmation decisions in the investigation into Cloud M Limited for failing to comply with GC18 and s135 of the Communications Act 2003

Document Number	Description	Provided to Ofcom by:
49	Hosted Services Contract (myconnectanywhere)	Cloud M
51	Cloud M First Response, Q3	Cloud M
52	Cloud M First Response, Q6	Cloud M
53	Email from Cloud M to Ofcom 300418	Cloud M
54	Cloud M Fourth Response	Cloud M
55	Cloud M First Response, Q7	Cloud M
56	Email from Cloud M to Ofcom 051218	Cloud M
57	Cloud M Second Response	Cloud M
58	Cloud M webpage on compensation	Cloud M
59	Email, Ofcom deadline reminder, Second Notice	Cloud M
60	Ofcom/Cloud M exchange, Second Notice 140518	Cloud M
61	Ofcom email to Cloud M, Second Notice 140518	Cloud M
62	Ofcom email to Cloud M, Second Notice 170518	Cloud M
63	Cloud M providing response to Second Notice	Cloud M
64	Cloud M email re Third Notice 040618	Cloud M
65	Ofcom email to Cloud M re Third Notice 060618	Cloud M
66	Initial assessment email to Cloud M	Cloud M
67	Response to initial assessment email from Cloud M	Cloud M
68	Cloud M statement 111217	Cloud M
69	Cloud M statement 131217 (1)	Cloud M
70	Cloud M statement 131217 (2)	Cloud M
71	First Notice	Cloud M
72	Cloud M First Response, Q4	Cloud M
73	Email re porting of all 28 numbers	Broadsoft, BT
74	Wellington Response	Wellington
75	February Invoices	Wellington
76	MFTS sending CLOA to Gamma	MFTS
77	Myconnectanywhere Partnership Agreement	Cloud M
78	2013 Invoices	Cloud M

Confirmation decisions in the investigation into Cloud M Limited for failing to comply with GC18 and s135 of the Communications Act 2003

Document Number	Description	Provided to Ofcom by:
79	Cloud M First Response, Q10	Cloud M
80	WTS website, landing page	n/a
82	Email regarding attachments sent to Cloud M	Broadsoft
83	Cloud M First Response, Q9	Cloud M