

# Confirmation Decision issued under section 139A of the Communications Act 2003 to Colt Technology Services relating to contravention of information requirements

## Subject of the Confirmation Decision

- 1.1 This document explains Ofcom’s reasons for giving Colt Technology Services Ltd (‘Colt’), whose registered company number is 02452736 and registered office is Colt House, 20 Great Eastern Street, London, England, EC2A 3EH, a confirmation decision (the ‘Confirmation Decision’) under section 139A of the Communications Act 2003 (the ‘Act’) in respect of its contravention of information requirements under section 135 of the Act. The Confirmation Decision itself is at Annex 1 of this document.

## Background

- 1.2 Ofcom has statutory powers contained in section 135 of the Act to require the provision of information which it considers necessary for the purpose of carrying out its functions. A person required to provide information by a request issued under that provision has a statutory duty to provide it to Ofcom in the manner and within such reasonable period as Ofcom may specify.<sup>1</sup>
- 1.3 These statutory powers are fundamental to Ofcom’s ability to carry out its statutory functions in relation to communications matters, in accordance with its principal duty of furthering the interests of citizens and consumers, where appropriate by promoting competition. They enable Ofcom to gather the information which it considers necessary to carry out its functions in a timely and effective manner and are therefore key to the integrity of the regulation of the communications sector.
- 1.4 Ofcom’s functions include conducting market reviews to determine whether markets are effectively competitive.
- 1.5 Between January 2020 and December 2020, Ofcom carried out a number of consultations as part of its Wholesale Fixed Telecoms Markets Review (‘WFTMR’). This resulted in a statement dated 18 March 2021,<sup>2</sup> which set out Ofcom’s decisions for the regulation of the fixed telecoms markets that underpin broadband, mobile and business connections, for the

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<sup>1</sup> See section 135(4) of the Act.

<sup>2</sup> [Statement: Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26 - Ofcom](#)

period from April 2021 to March 2026. These decisions were designed to promote competition and investment in gigabit-capable networks.

- 1.6 As part of the WFTMR, Ofcom gathered a wide range of evidence to assess actual market conditions as well as to produce forecasts that it considered will appropriately reflect developments over time. Part of this information gathering process involved requesting information from a number of communications providers ('CPs') in relation to their leased lines and dark fibre networks.
- 1.7 Ofcom has found that Colt has breached requirements imposed on it under section 135 of the Act, by failing to provide complete information to Ofcom. Ofcom required Colt to provide the information for the purposes of its WFTMR.
- 1.8 We have decided to impose a penalty of £15,000 in respect of the contravention we have identified. We consider that this is appropriate and proportionate, given the seriousness of the breach, Colt's size and turnover, and Ofcom's central objective of deterring further contraventions. This penalty includes a 25% reduction as a result of Colt's acceptance of liability and entering into a voluntary settlement with Ofcom.

## Legal framework

- 1.9 In this section, we describe Ofcom's powers to require the provision of information and to take enforcement action in relation to such information requirements.
- 1.10 Section 135(1) 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*".
- 1.11 Section 135(2) states that CPs fall within the scope of this provision. The expression "*communications provider*" is defined at section 405(1) of the Act. It means:  
*"a person who provides....an electronic communications network or an electronic communications service."*
- 1.12 Section 135(3) sets out that the purposes for which Ofcom may require information to be provided under section 135(1) includes information required for the purpose of:  
*"identifying markets and carrying out market analyses in accordance with, or for the purposes of, any provision of this Chapter".<sup>3</sup>*
- 1.13 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, while section 135(5) 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:

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<sup>3</sup> Section 135(3)(g) of the Act.

- 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.

1.14 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 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 the information to be provided by the person to OFCOM in order to comply with a requirement under section 135 or 136;*
  - (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.”*

1.15 Sections 139A(2) and (3) of the Act states that Ofcom may give a person 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, if 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.

1.16 Section 139(5) of the Act provides that the amount of any penalty Ofcom may impose has to be appropriate and proportionate and cannot exceed £2,000,000.

## Relevant facts

### The Notice

1.17 On 19 February 2020, Ofcom emailed Colt<sup>4</sup> to inform them that Colt would shortly be receiving a statutory request for information under section 135 of the Act in relation to the WFTMR, noting that:

*“the specified information we will be seeking concerns your leased lines network and connections as at December 2019 – in particular:*

*(a) network connections and extensions; and*

*(b) flexibility points, network ducts and sites.*

*We expect this to be an update of the specified information we previously required you to provide to us in January 2018 as part of our last review of business connectivity markets. We therefore envisage that the questions will be almost exactly the same as before and, for this reason, we do not intend to send you a draft notice.”*

1.18 On 3 March 2020<sup>5</sup> Ofcom issued a statutory request for information to Colt under section 135 of the Act (‘the Notice’), requesting specified information about:

- a) new connections and network extensions (part A);
- b) network duct, flexibility points and sites (part B); and
- c) the person responsible for sign off for the response (part C).

Annex 1 to the Notice contained the specific questions Colt was required to answer. The deadline for response was 31 March 2020 for part B (questions B1, B2 and B3) and 28 April 2020 for parts A (questions A1, A2) and C (question C1).

1.19 The Notice was temporarily suspended<sup>6</sup> due to the start of the first Covid-19 national lockdown, and reactivated on 1 May 2020,<sup>7</sup> with a revised deadline for response of 29 May 2020 for part B and 26 June 2020 for part A and part C, together ‘the Deadlines’.

1.20 The Notice included several annexes which formed part of the statutory notice. These annexes were:

- a) Annex 1, in which the questions for respondents were preceded by “General Notes in responding to the data requested in Annex 1”. This included definitions of the main terms used in the request, including “leased line”, which was defined as:

*“...asymmetric service of dedicated (i.e. uncontended) capacity between two fixed locations. Examples of leased lines are illustrated in Annex 3”;*

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<sup>4</sup> Email dated 19 February 2020 from Ofcom to Colt – COLT001.

<sup>5</sup> Email dated 03 March 2020 from Ofcom to Colt – COLT002.

<sup>6</sup> Email dated 25 March 2020 from Ofcom to Colt – COLT003.

<sup>7</sup> Email dated 01 May 2020 from Ofcom to Colt – COLT004.

- b) Annex 2, which informed recipients which other companies had received the same request;
- c) Annex 3, which provided recipients with examples of the use of leased line services;
- d) Annex 4, which mapped the data requirements from the Notice with the equivalent question number in the 2019 Business Connectivity Market Review request ('the 2019 BCMR Request') and noted the differences between that request and the data requested in the Notice; and
- e) Annexes 5 and 6, which comprised the confidentiality template and MFT (Managed File Transfer) information sheet respectively.

1.21 For the purposes of the Confirmation Decision, we considered whether Colt complied with the requirements under section 135 in relation to question A1 of the Notice. In summary, these questions requested the following information:

- a) Question A1 of the Notice requested:

*"Of all live leased lines that you supply, whether to business customers or mobile cell sites or to other telecommunications providers, please provide a list of those on-net and off-net circuits that you connected to customers in 2018 and 2019".*

Question A1 of the Notice also asked for Colt to include and identify separately services supplied using specified types of interfaces.

- b) Question A2 of the Notice requested a list of all dark fibre leased to other operators and end-users in 2018 and 2019.

1.22 Both questions A1 and A2 requested specific details of the services, such as product name, circuit bandwidth, technology used, customer details, and date of connection of the circuits.

## Colt's initial Response

1.23 On 29 May 2020, Colt responded to part B of the Notice, which included questions B1, B2 and B3.<sup>8</sup>

1.24 On 23 June 2020, Colt responded to parts A and C of the Notice, which included questions A1, A2 and C1.<sup>9</sup> In their response, Colt noted that they *"only lease dark fibre to operators and end users"*.

1.25 Colt attached a spreadsheet in its response of 23 June 2020 in relation to questions A1 and A2, which did not include details of any leased lines. In the column of the spreadsheet headed "Product name", all entries included the words "dark fibre" in their name. Similarly, in the column headed "Product offering", all entries were "COLT Dark Fibre".<sup>10</sup>

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<sup>8</sup> Email dated 29 May 2020 from Colt to Ofcom – COLT005.

<sup>9</sup> Email dated 23 June 2020 from Colt to Ofcom – COLT006.

<sup>10</sup> Colt response dated 23 June 2020, spreadsheet "A1, A2 and C1 – COLT.XLSX" – COLT006A.

- 1.26 On 24 June 2020, Ofcom contacted Colt in relation to its response to questions A1 and A2. Ofcom noted that Colt had not provided several pieces of the information requested for each of the entries in lists A1 to A2.<sup>11</sup> This missing information related to the specific details requested in relation to each entry. Ofcom’s request of 24 June 2020 did not specifically note that Colt had not included any active leased lines in its response.
- 1.27 On 2 July 2020, Colt provided an updated version<sup>12</sup> of its previous response to questions A1, A2 and C1.<sup>13</sup> The updated response did not make any changes to entries under the Product name or Product offering columns, meaning that Colt still had not included details of any leased lines in its response.
- 1.28 On 3 July 2020, Ofcom emailed Colt with further clarificatory questions in relation to questions A1 and A2.<sup>14</sup> These questions were split into three. The first question was as follows:

*“These circuits are all classified as dark fibre. Could you confirm that you connected or regraded/upgraded no active leased lines in 2018 or 2019”.*

The second question asked:

*“You have provided the date of upgrade for these dark fibre circuits. Could you confirm that all these dark fibre circuits were upgraded?”*

The third question included five sub-questions on the definitions used in the information Colt had provided about who owns the duct infrastructure.

- 1.29 The deadline for response to this clarification email was 10 July 2020. Colt replied to Ofcom on 6 July 2020.<sup>15</sup> In this email, Colt stated that:

*“We confirm that we connected or regraded/upgraded no active leased lines in 2018 or 2019”*

and

*“[redacted]”*

Colt also answered each of the five sub-questions that made up question 3 of Ofcom’s email of 3 July 2020.

- 1.30 Between July 2020 and December 2020, Ofcom cleaned and processed the data provided by Colt as well as other telecoms providers to determine the location and type of lines and their geographic spread across the UK.<sup>16</sup>

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<sup>11</sup> Email dated 24 June 2020 from Ofcom to Colt – COLT007.

<sup>12</sup> This updated spreadsheet included several additional columns containing the information requested by Ofcom in Ofcom’s email dated 24 June 2020. Colt also noted three further clarifications in the email, which were that:  
*“... [redacted].”*

<sup>13</sup> Email dated 2 July 2020 from Colt to Ofcom - COLT008.

<sup>14</sup> Email dated 3 July 2020 from Ofcom to Colt – COLT009.

<sup>15</sup> Email dated 6 July 2020 from Colt to Ofcom – COLT010.

<sup>16</sup> More details on the nature of Ofcom’s leased lines geographic analysis is set out in Annex 5 of the WFTMR statement: [2021 WFTMR: Annexes 1-26 \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/wftmr/wftmr_2021/wftmr_2021_annexes_1-26_ofcom.org.uk).

## The December 2020 correspondence with Ofcom

- 1.31 Upon further review in December 2020, Ofcom became concerned that Colt's responses may have been missing a significant amount of information which had been required by the Notice.
- 1.32 In particular, Ofcom was concerned with Colt's response to question A1, which did not include details of any active leased lines. This answer appeared inconsistent with Colt's response to a previous statutory information request sent to Colt as part of the 2019 BCMR Request, where Ofcom had asked for similar data but in relation to the year 2017.<sup>17</sup>
- 1.33 On 11 December 2020, Ofcom wrote to Colt,<sup>18</sup> noting Colt's confirmation of 6 July 2020 that:
- "...Colt had not connected or regraded/upgraded any active leased lines in 2018 or 2019, and that all new connections in these years were dark fibre circuits and these were all upgrades of existing active circuits".*
- 1.34 Ofcom then said it would like:
- "...to understand the background to this change. In particular, why Colt has not made any new sales of active leased lines? Why have you not connected or up/regraded any new active leased lines in this two year period? Does this, for example, reflect a change in business strategy and if so what is driving this?"*
- 1.35 Colt responded on 11 December 2020<sup>19</sup> with the following response:
- "Looking at the data I am afraid that the request was lost in translation. [X]. When we said active, we meant that [X]. **We have not made any changes to the wavelength services since then.**"*
- 1.36 On 14 December 2020 Ofcom emailed Colt,<sup>20</sup> setting out its serious concern that Colt may have failed to provide a complete response to the Notice, particularly in relation to question A1.
- 1.37 During the call on 14 December 2020,<sup>21</sup> during which Ofcom set out its concerns around Colt's response to the Notice, Colt undertook to provide the missing information requested in question A1 of the Notice within 24 hours (i.e. by close of play on 15 December 2020).
- 1.38 As Colt had not provided this information by 16 December 2020, Ofcom emailed Colt<sup>22</sup> asking for the missing information requested in question A1 of the Notice by 5pm on 17 December 2020. Ofcom also asked for Colt to satisfy itself that its response to question A2 was complete and accurate, and if it was not in any respect, to provide missing or corrected information by 23 December 2020.

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<sup>17</sup> Email dated 28 February 2018 from Colt to Ofcom – COLT023.

<sup>18</sup> Email dated 11 December 2020 from Ofcom to Colt – COLT011.

<sup>19</sup> Email dated 11 December 2020 from Colt to Ofcom – COLT012.

<sup>20</sup> Email dated 14 December 2020 from Ofcom to Colt – COLT013.

<sup>21</sup> Note from call dated 14 December 2020 between Colt and Ofcom – COLT014.

<sup>22</sup> Email dated 16 December 2020 from Ofcom to Colt – COLT015.

- 1.39 Colt set out an explanation for the problems with their initial response in an email<sup>23</sup> to Ofcom on 16 December 2020,<sup>24</sup> where they said:
- “It appears that the request was substantially misunderstood ... The misunderstanding was the result of a change in staffing within my team”.*
- 1.40 On 17 December 2020, Colt spoke with Ofcom on the phone and advised what information it would be able to set out and by when.<sup>25</sup> Colt agreed to provide an updated response to questions A1 and A2 by close of play on 18 December 2020, and an updated response to question B3 by close of play on 23 December 2020.
- 1.41 Colt provided a response to questions A1 and A2 on 18 December 2020.<sup>26</sup> This response included a large number of entries in the columns headed “Product offering” and “Product name” that classified the lines as services other than dark fibre (e.g. “Ethernet Services”).<sup>27</sup>
- 1.42 As Colt had agreed with Ofcom in a call on 17 December 2020, two columns were left blank in the response of 18 December 2020. These columns related to the type of site, and not whether the entry was a leased line or dark fibre.
- 1.43 Colt then provided its response to question B3 on 22 December 2020.<sup>28</sup> Attached to the same email, Colt also provided a revised version of their response to questions A1 and A2 which included the previously missing columns.
- 1.44 Having reviewed these updated responses, Ofcom sent a series of clarificatory questions to Colt on 4 January 2021,<sup>29</sup> to which Colt responded later the same day.<sup>30</sup> Following Colt’s response, Ofcom was satisfied with the data it had received from Colt and no further information was required in relation to the Notice.

## Ofcom’s investigation

- 1.45 Given the importance and reliance we place on the accuracy of information requested under our statutory powers, we decided to open an investigation into Colt’s compliance with section 135 of the Act on 29 March 2021.
- 1.46 On 16 September 2021, Ofcom issued Colt with a notification under section 138 of the Act (the ‘s138 Notification’), which set out our reasonable grounds for believing that Colt had contravened section 135 of the Act and proposed a financial penalty of £20,000.
- 1.47 On 22 September 2021, Colt entered into a voluntary settlement agreement with Ofcom to resolve the investigation. It confirmed that it would accept full liability for the contravention as set out in the s138 Notification, agreed to pay the penalty proposed in

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<sup>23</sup> Colt also advised that they would be providing an updated response to question B3, noting the presence of “irrelevant information that needs cleaning”.

<sup>24</sup> Email dated 16 December 2020 from Colt to Ofcom – COLT016.

<sup>25</sup> Email dated 17 December 2020 from Ofcom to Colt – COLT017.

<sup>26</sup> Email dated 18 December 2020 from Colt to Ofcom – COLT018.

<sup>27</sup> For example, over [X] of the [X] records in “Product Offering” were classified as something other than Dark Fibre.

<sup>28</sup> Email dated 22 December 2020 from Colt to Ofcom – COLT019.

<sup>29</sup> Email dated 4 January 2021 from Ofcom to Colt – COLT020.

<sup>30</sup> Email dated 4 January 2021 from Colt to Ofcom – COLT021.



the s138 Notification and accepted for a streamlined administrative process to apply for the remainder of the investigation.

- 1.48 This Confirmation Decision sets out Ofcom’s decision that Colt has contravened section 135 of the Act and sets out the action that has and will be taken in relation to this matter.

## Grounds for finding that Colt contravened section 135 of the Act

- 1.49 We are satisfied that Colt failed to provide the information required by the Notice in the period 26 June 2020 to 4 January 2021, in contravention of its obligations under section 135 of the Act, for the reasons set out below.

### Colt failed to provide the required information within the stipulated timeframe

- 1.50 We consider here whether Colt provided the information required by the Notice in the manner and within the time period specified by Ofcom.<sup>31</sup>
- 1.51 As noted above, Colt provided a response to part B of the Notice on 29 May 2020 (the date of the deadline for this part of the request) and a response to parts A and C of the Notice on 23 June 2020 (three days before the deadline for these parts of the request).
- 1.52 For the purposes of the Confirmation Decision, we focused on the information provided in Colt’s response to questions A1 and A2, and specifically the lack of active leased line information provided in response to question A1.
- 1.53 As noted above, while Colt did provide a response to question A1 by the initial deadline for the Notice, they did not provide information on any active leased lines connected in 2018 and 2019 by this initial deadline.
- 1.54 We note that on two occasions, Ofcom sent two emails seeking clarification – firstly on 24 June 2020, and later on 3 July 2020, with the second explicitly noting that Colt’s response indicated a lack of any active leased lines connected in 2018 or 2019 and asking Colt to confirm if this interpretation was correct. Colt confirmed that this was the case.
- 1.55 In December 2020, further investigation by Ofcom and subsequent discussions with Colt confirmed that Colt had failed to provide information on its leased line connections in 2018 and 2019 as per question A1 of the request.<sup>32</sup> As such, it is clear that the information provided in response to question A1 was incorrect and incomplete and needed to be re-submitted. Colt’s re-submission stipulated the provision of over [~~8~~] leased lines. The correct information was not provided until 22 December 2020, with final clarifications provided on 4 January 2021.
- 1.56 We note that Colt acknowledged that they had not provided the correct information at the original deadline in their email to Ofcom of 16 December 2020.<sup>33</sup> In a letter to Ofcom dated

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<sup>31</sup> Section 135(4) of the Act.

<sup>32</sup> This consequently led to Colt also needing to correct its response to question A2.

<sup>33</sup> Email dated 16 December 2020 from Colt to Ofcom – COLT016.

1 April 2021, Colt recognised that it had “*made a mistake in interpreting the s135 request.*”  
Colt also noted that:

*“Questions A1 and A2 were very clear in referring to the services (both active and passive) that Colt sells.”*

1.57 We therefore consider that Colt failed to provide correct information on the number of live leased lines connected to customers in 2018 and 2019. As such, we are satisfied that Colt has contravened a requirement imposed under section 135 of the Act by failing to provide the information required by question A1 of the Notice within the specified period, which subsequently impacted Colt’s provision of information in relation to question A2.

## Penalty

1.58 Under section 138(2)(e) of the Act, where Ofcom finds that there are reasonable grounds for believing there has been a breach, it may give that person a notification under section 138 specifying, among others, any penalty which Ofcom are minded to impose in accordance with section 139. Section 139(5) of the Act provides that the amount of any penalty Ofcom may impose for a contravention of information requirements has to be appropriate and proportionate and cannot exceed £2,000,000.

1.59 Section 139A(4) of the Act states that a confirmation decision may require the person to pay the penalty specified in the notification issued under section 138 of the Act, or such less penalty as Ofcom consider appropriate in the light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention.

### It is appropriate to impose a penalty for the contravention

1.60 We are satisfied that it is appropriate to impose a penalty in relation to the alleged contravention by Colt of the information requirements in section 135 of the Act for the following reasons:

- a) Ofcom’s powers under section 135 of the Act are crucial to Ofcom’s ability to effectively regulate the communications sector. A contravention of a requirement to provide information requested under section 135 is a serious matter as it hinders Ofcom’s ability to carry out its functions and has the potential to undermine the integrity of the regulatory regime, thereby harming citizens and consumers; and
- b) The Notice requested information that was important in informing the market analysis for Ofcom’s WFTMR. This market review represented one of Ofcom’s key strategic priorities and its outcomes were expected to have a large impact on a wide range of stakeholders. Colt’s failure to provide the correct data by the deadline set back Ofcom’s analysis by several weeks and, had the error not been spotted, could have led to an incorrect assessment of the level of competition in different geographic areas.

- 1.61 Accordingly, Ofcom considers that Colt's contravention of the information requirements specified in the Notice is a serious matter and that it is appropriate and proportionate to impose a penalty.

## Penalty amount

- 1.62 As set out in our Penalty Guidelines,<sup>34</sup> the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient, having regard to the relevant turnover, to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future. It is also important that the penalty imposed serves to deter the wider industry from contravening regulatory requirements.
- 1.63 Any penalty we set should therefore be sufficiently high to discourage poor compliance, incentivise Colt's management to change the conduct of the company and ensure that its processes are effective in identifying errors when they occur, encouraging good practices and a culture of compliance across the organisation. In that regard, our Penalty Guidelines set out a range of further factors which may be relevant in any particular case and Ofcom has assessed those factors carefully in relation to the circumstances of this case to the extent they are relevant. Ofcom has also considered whether there are any relevant precedents and, if so, the extent to which they should be followed in this case. We have, however, decided the appropriate and proportionate amount of penalty in this case by taking those factors into account in the round. We set out below Ofcom's consideration of each of them.

## Seriousness, culpability and harm

- 1.64 As noted above, a contravention of a requirement to provide information is inherently serious since Ofcom's powers under section 135 of the Act are fundamental to its ability to carry out its statutory functions.
- 1.65 Where companies contravene these requirements, Ofcom is at risk of being prevented from exercising its functions in the interests of citizens and consumers because of the resulting asymmetry of information. This occurs because much of the information which Ofcom requires and uses, in order to fulfil its duty to assess markets and determine appropriate regulatory interventions to ensure markets are effectively competitive and remedies are appropriate to address areas of significant market power, is held by the CPs that it regulates. It is therefore of fundamental importance that Ofcom's decisions are based on accurate and reliable data.
- 1.66 As set out at paragraph 1.13 above, Colt had a duty under section 135(4) of the Act to provide the information specified in question A1 of the Notice. There is no evidence that the breach occurred deliberately or recklessly. However, correspondence with Colt

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<sup>34</sup> Ofcom, Penalty guidelines, September 2017: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/106267/Penalty-Guidelines-September-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/106267/Penalty-Guidelines-September-2017.pdf).

suggests that it failed to put in place adequate systems and processes to ensure that the information provided to Ofcom would be accurate and complete. In particular, we note that there appeared to be:

- a) a lack of governance processes in place to review and verify the accuracy of information before it was submitted to Ofcom;
- b) inadequate training of individuals tasked to respond to Ofcom’s statutory information requests; and
- c) insufficiently robust processes and procedures to check statutory information requests against previous requests, to ensure consistency.<sup>35</sup>

1.67 We have no reason to believe that Colt made any gain, financial or otherwise, as a result of the contravention.

1.68 In relation to harm arising from the contravention, Ofcom was able to remedy the deficiencies in Colt’s submission in advance of publishing its statement in the WFTMR. However, as noted at paragraph 1.60b) above, Colt’s failure to provide the correct data by the deadline set back Ofcom’s analysis by several weeks and, had the error not been spotted, could have led to an incorrect assessment of the level of competition in different geographic areas.

#### **Co-operation and remedial action**

1.69 Colt did not identify the breach or proactively take steps to correct the inaccurate data submitted in its original response to the Notice in advance of Ofcom bringing the issue to its attention, and it was only on Ofcom’s second request for Colt to confirm they had submitted accurate information that Colt realised the error. However, we do acknowledge that Colt cooperated fully with Ofcom, acknowledged the mistake and acted promptly to re-submit the correct data in December 2020, as soon as it understood that it had made an error, including requesting assistance from an appropriately experienced colleague to ensure that no further errors were made. This prompt action allowed the WFTMR team to take steps to adjust their analysis of competitive conditions in advance of publishing its final decisions.

1.70 We have also taken account of the steps taken proactively and promptly by Colt to improve its procedures and processes associated with responding to Ofcom’s statutory information requests. In particular, Colt submits that it has introduced the following new measures, with full support of its management team:

*“Four eyes: all future S.135 requests will be reviewed before submitting, by a sufficiently experienced team member*

*Comparison with previous submissions: all future S.135 requests will be compared with previous requests covering the same subject matter*

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<sup>35</sup> Letter dated 1 April 2021 from Colt to Ofcom – COLT022.

*Training: all future S.135 requests will be handled by a team member with the appropriate level of experience. All less experienced team members will be provided with the required level of training, before they are permitted to take the lead on S.135 requests".<sup>36</sup>*

### History of contraventions

1.71 We note that Colt has a good history of compliance and this is the first occasion where we have proposed to find Colt in breach of its duties under section 135 of the Act. We also note that Colt has frequently cooperated on a voluntary basis with market review teams, providing insight and information above and beyond its legal requirements.

### Deterrence

1.72 As noted above at paragraph 1.62, Ofcom's Penalty Guidelines explain that 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, having regard to the seriousness of the infringement.

1.73 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.

### Conclusion on the appropriate penalty

1.74 Taking all of the factors set out at paragraphs 1.64 to 1.73 above in the round, we consider a penalty of £15,000 to be appropriate and proportionate, given the seriousness of the contravention, the potential harm to consumers and citizens, Colt's turnover in its most recently filed statutory accounts<sup>37</sup> and Ofcom's central objective of deterring further contraventions both by Colt and other providers.

1.75 The calculation of this figure includes a 25% discount applied to the provisional penalty figure of £20,000 proposed in the s138 Notification, as a result of Colt's accepting of liability and entering into a voluntary settlement with Ofcom.

1.76 Colt has until 11 December 2021 to pay the penalty.

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<sup>36</sup> Letter dated 1 April 2021 from Colt to Ofcom – COLT022.

<sup>37</sup> The most recent set of statutory accounts filed by Colt at Companies House (on 20 December 2020) show that in the period to 31 December 2019 its total assets less current liabilities was £ -272,550,000 while its turnover was £292,669,000: [Colt Annual Report 31 December 2019](#).

# A1. Confirmation decision under section 139A of the Communications Act

## Section 135 Communications Act 2003

- A1.1 Section 135(1) of the Communications Act 2003 ('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".
- A1.2 Section 135(2) sets out the persons falling within that subsection are:
- a) a communications provider;
  - b) a person who has been a communications provider;
  - c) a person who makes, or has made, any associated facilities available to others;
  - d) a person, other than a communications provider, to whom a universal service condition applies or has applied;
  - e) a person who supplies electronic communications apparatus; or
  - f) a person not falling within the preceding paragraphs who appears to Ofcom to have information required by them for the purpose of carrying out their functions under Chapter 1 of the Act.
- A1.3 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.
- A1.4 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.

## Sections 138 and 139 of the Act

- A1.5 Sections 138 to 144 of the Act specify the enforcement powers that Ofcom has in relation to contravention of information requirements, including the imposition of penalties. Section 138 of the Act (Notification of contravention of information requirements) states that, where Ofcom determines 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.
- A1.6 Section 138(2) states that a notification 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 the information to be provided by the person to Ofcom in order to comply with a requirement under section 135 or 136 of the Act;
- e) specifies any penalty that Ofcom are minded to impose in accordance with section 139 of the Act; and
- f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 140 of the Act.

A1.7 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.

## **Section 139A of the Communications Act 2003**

A1.8 Section 139A of the Act allows the Office of Communications ('Ofcom') to issue a decision (a 'Confirmation Decision') confirming the imposition of requirements on a person where:

- a) that person has been given a notification under section 138 of the Act;
- b) Ofcom has allowed that person an opportunity to make representations about the matters notified; and
- c) the period allowed for the making of representations has expired.

A1.9 Ofcom may not give a Confirmation Decision to a person unless, having considered any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under section 138.

A1.10 A 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), 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 issued 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.

## **Subject of this Notification**

A1.11 This Notification is addressed to Colt Technology Services Ltd ('Colt'), whose registered company number is 02452736. Colt's registered office is Colt House, 20 Great Eastern Street, London, England, EC2A 3EH.

## **Notification given by Ofcom under section 138**

A1.12 On 16 September 2021, Ofcom gave a notification under section 138 of the Act (the "Section 138 Notification") to Colt as Ofcom had reasonable grounds for believing that Colt had contravened its obligations under section 135 of the Act. Specifically, that, between 26 June 2020 and 4 January 2021, Colt failed to provide complete and accurate information that Ofcom requested from it in the Notice dated 3 March 2020 as part of the Wholesale Fixed Telecom Market Review.

A1.13 The Section 138 Notification also specified the penalty that Ofcom was minded to impose on Colt in respect of the contravention of section 135 of the Act.

A1.14 The Section 138 Notification allowed Colt the opportunity to make representations to Ofcom about the matters set out therein.

## **Confirmation Decision**

A1.15 The period allowed for making representations has now expired. On 22 September 2021, Colt confirmed to Ofcom that it would not make any written or oral representations about the matters notified and accepted liability for the contravention by admitting it contravened section 135 of the Act in the period 26 June 2020 – 4 January 2021.

A1.16 Accordingly, Ofcom is satisfied that Colt has, in the respects notified in the Section 138 Notification, contravened section 135 of the Act. Ofcom has decided to give Colt a confirmation decision, and to impose a financial penalty, in accordance with section 139A of the Act. The extent of those information contraventions and the reasons for Ofcom's determination are set out in the explanatory statement to which this Confirmation Decision is annexed.

## **Penalty**

A1.17 Ofcom has determined that Colt must pay a penalty of £15,000 in respect of its contravention of section 135 of the Act. This includes a 25% discount applied to the penalty figure of £20,000 proposed in the Section 138 Notification, as a result of Colt entering into a voluntary settlement with Ofcom.

A1.18 Colt has until 5.00pm on 11 December 2021 to pay Ofcom the penalty. If the penalty is not paid within the period specified, it can be recovered by Ofcom in accordance with section 139A(7) of the Act.



## **Interpretation**

1.77 Words or expressions used in this Confirmation Decision have the same meaning as in the Act except as otherwise stated in this Confirmation Decision.

Signed by

**Suzanne Cater**

**Principal, Enforcement**

*A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003*

11 October 2021