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Dear Louisa

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### Revising Ofcom's Penalty Guidelines

This is Hutchison 3G UK Limited's (Three) response to Ofcom's consultation on the penalty guidelines. Three is grateful for the opportunity to comment on the proposed changes which aim to create a stronger deterrent effect to help reduce the levels of complaints to Ofcom and contraventions of regulatory requirements. Ofcom suggests that it may be necessary to set higher penalties than in previous cases and that precedent cases will be less relevant in the future. In addition they propose that there is an explicit link between the level of penalty and the size and turnover of the regulated body.

Three takes the issue of regulatory compliance extremely seriously and has dedicated resource to ensure compliance of all aspects of regulation and law. However we do not believe that the changes proposed by Ofcom with higher penalties, will create a stronger deterrent for businesses. The consultation mentions two aspects of enforcement action which are relevant to applying the penalty guidelines: General Conditions of Entitlement and silent and abandoned calls. Taking each of these areas in turn:

#### General Conditions

The consultation document itself does not provide sufficient evidence to support its assertion that the current level of penalties for General Condition breaches is insufficiently dissuasive and needs to be increased.

Paragraph 1.9 suggests that in the last four years there have been only 10 investigations and 7 open enforcement programmes which have resulted in financial penalties. Ofcom's published data shows a decrease in complaints relating to GCs since 2011. There is also no evidence of repeat offences involving the same provider. Given the number of Electronic Communications Service Providers operating in the UK and the rapid growth in customer numbers and explosion in telecom usage, these numbers are extremely low and suggest that overall communications providers do pay attention to the requirements imposed on them.

The guidelines should recognise that communications providers are incentivised to comply with general conditions by other considerations other than penalties. These include reputational and brand considerations, delivering the best possible experience for customers, the impact on their ongoing relationship with Ofcom as well as a legal obligation to comply.

Furthermore not all contraventions are intentional or designed for commercial gain. The guidelines and resulting penalties must distinguish between genuine breaches caused by wilful non-compliance and inadvertent breaches such as differences over legal interpretation or a simple error or omission where

the provider has been operating in a compliant manner. Penalties will only act as a deterrent in the case of deliberate non-compliance and so these cases should be subject to much higher levels of fines. For cases involving process errors or omissions it is often not the level of the fine but the fact of the enforcement action that provides the deterrent effect.

We note that in 2011 the level of penalties for responding to S135 information gathering requests was increased from £50k to £2m for providers refusing to respond or deliberately providing false information. This increase was to deal with a particular situation where providers choose not to respond to information requests in order to gain commercial advantage. In these circumstances a higher fine can have a deterrent effect which is entirely different to increasing fines generally. However Ofcom has not brought forward any evidence which suggests that similar circumstances exist for compliance with GCs.

#### Silent and abandoned calls

The other category of complaints mentioned in the consultation is abandoned and silent calls where the level of complaints has remained broadly constant since 2012. We recognise there are systemic issues with silent calls which have a detrimental impact on consumers particularly the elderly or vulnerable and therefore the impact of a breach can be extremely serious. Consequently there are legitimate reasons why a penalty for silent calls may be set at a higher level.

However simply increasing penalties for contraventions in this area may make little difference as there are wider issues involved. The industry is already collaborating and working closely with Ofcom in sharing information and looking at developing technical solutions to deal with silent and abandoned calls by unscrupulous providers. Measures include developing filters and better clearance of CLIs through a pre-authorisation process which would allow providers to block spoof CLIs as presently it is difficult to identify and trace offenders who hide their CLIs. However many of the serious offenders work on the basis that they cannot easily be detected and disappear or are hosted off shore so better international cooperation is vital. Ofcom should be investing effort in projects such as these which will have a real impact on reducing the volume of silent calls.

Three believes that the framework within the guidelines for assessing the level of penalties seems reasonable. However to push for higher penalties overall is inappropriate given there is no body of evidence to underpin Ofcom's view that it needs to create a stronger deterrent and that the current penalty levels for non-compliance with GCs is insufficient to deter others from similar offences.

Please contact me if you have any questions or if you wish to discuss our response in more detail.

Yours sincerely,



Jillian Phillips

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