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Dear Mr Green,

Re: Review of the metering and billing direction – Further consultation

We very much welcome this further consultation and Ofcom's intentions to move towards a light touch regulatory approach of the Total Metering and Billing Scheme (TMBS).

In this further consultation, Ofcom has recognised that the previous proposals, based on targets, would result in an unduly burdensome approach to ensuring that Communication Providers (CPs) deliver accurate bills (which is the requirement of General Condition (GC) 11). The conclusion in this consultation, is that CPs should instead operate under a TMBS framework which is process-led. Colt operates solely in the business sector and therefore this revised approach goes a long way towards simplifying the regime without undermining the overriding objective of GC11.

There are a number of areas in the consultation which require further consideration and these are as follows:

Transitional and Implementation Arrangements

- a) We seek that Ofcom sets out the transitional arrangements between moving from the old to the new Direction, as these are not currently set out in this consultation. Specifically, on the basis that the new Direction is intended to be more 'light touch' when compared with the current Direction and for those CPs that already have the relevant TMBS certification(s) in place, we anticipate that the associated timeline for such CPs completing the new TMBS certification should be simplified providing all pre-requisite material (eg. High Level Description, Measurement, Risk Management and Measurement Strategy) is in order and reflects the operation of the respective TMBS.
- b) Ofcom has suggested that implementation may occur as late as 2015. In our opinion, we can see no reason as to why implementation cannot be brought forward.

2. Improved governance

There has been a lack of transparency under the current regime relating to the way in which the scheme is administered by Ofcom and the Approval Bodies (ABs). This is further complicated by the fact that there are three independent ABs. As a result this has led to disparate treatment of CPs.

We very much support the need for the following:

- a) Events Measurement Limits - during the recent MABAF meeting it was evident that the Usage, Non-Usage (recurring and non-recurring) Measurement Events Limits in the new Direction were not aligned with

Ofcom's intent for a process based TMBS. It was agreed that the use of 'limits' relating to the specific events would be replaced with 'capabilities'. The subsequent material ie. 'Guidelines for the Structure of a Good TMBS' and the 'Measurement Capability' documents issued by ABs have reflected this change and the new Direction would require changes to reflect this outcome.

- b) Application - CPs should be required to notify Ofcom at the point they submit their application to the relevant AB. This will ensure that Ofcom has a greater awareness of how the scheme is working more generally and also specifically what CPs are doing to achieve certification of their respective TMBS.
- c) High Level Description (HLD) - The new Direction refers to "... (which must be obtained and will not be unreasonably withheld)." relating to the provision of the HLD. It is evident that the HLD is a mandatory facet of obtaining the certification and therefore it is unclear why this particular text has been included as clearly it is in the interest of the CP to put forward a robust application.
- d) Approval and Certification - the approach set out in the new Direction is unchanged. However, one area in particular which requires refinement is the specification of a time period by when a CP should normally expect to receive confirmation of the certification of its TMBS, subject to all pre-requisite information and the open consultation process having been completed satisfactorily. Without an indication of such a time period, CPs could potentially be waiting indefinitely for receipt of approval from the respective AB, particularly at the start of the new scheme when the ABs will be faced with a high workload to deal with.
- e) Information to retail CPs - Ofcom proposes in their summary of the non-material changes that wholesale CPs should make available '... any necessary information ...' to retail CPs. In providing the relevant invoice and backing data, this is all the information that the retail CP will require in order to validate the CPs wholesale bills.
- f) Recertification - the new Direction indicates that a CPs TMBS will require re-certification periodically although there is no indication in the proposals what the trigger points for this re-certification will be. These need specifying so that CPs can plan this into their work schedules.
- g) Extension of Scope to an Existing Approval - Ofcom propose that when new products and services are introduced that these be included within the scope of the TMBS once the annual turnover reaches £2m. There is no rationale provided in the consultation as to how this threshold has been determined and therefore whether this is proportionate.
- h) Memorandum of Understanding (MOU) between Ofcom and ABs - we very much support the production and publication of such a MOU as this will increase transparency on the workings of both Ofcom and the ABs. This should lead to greater confidence on the part of CPs on how these parties are administering their respective responsibilities under the scheme.
- i) Enforcement - the current three non-compliance Categories have been subsumed into the new Direction unchanged. There are no timelines specified on any actions which are undertaken by the AB and / or Ofcom in relation to these non-compliances. Timelines should be set out in the Direction so that there is

transparency on any actions which fall on the AB and / or Ofcom and as a result the CP has certainty on when to expect a response from the AB and / or Ofcom.

- j) Templates - it would be most beneficial to have available common templates which CPs can use as a model for preparing the underlying TMBS documentation eg. High Level Description, Measurement, Risk Management, Measurement Strategy, Monthly Reporting. This will ensure that CPs target their efforts accordingly.
- k) Regular meetings of the MABAF - although Ofcom set out its intentions to facilitate bi-annual meetings moving forward, there is the need to have the flexibility to call meetings at other intervals. During the transition period, implementation issues are likely to arise and therefore the timelines for such meetings in the Direction should be sufficiently flexible to accommodate this.
- l) Guidance material - such material should be prepared outlining how the scheme should operate on a day-to-day basis and periodically be updated to reflect key developments. For example, MABAF, in response to CP requests at the March meeting, prepared a document highlighting the key characteristics of a good TMBS.
- m) Frequently Asked Questions - although the specific nature of each CP's compliance with the TMBS is confidential, there is no reason why periodic anonymised FAQ's cannot be produced. These could consider generic matters that are being considered by the ABs either in response to specific queries raised by CPs or as a result of audits undertaken.
- n) Enhancement to Ofcom's website - we very much support the need for Ofcom's website to be updated so that there is clear information available, which is periodically updated, about the TMBS.

Finally, there is currently an inconsistent use of terminology in the new Direction relating to the use of "consumers" and "end-users". GC 11 refers to "End Users", therefore for consistency purposes the new Direction should align with GC 11. In addition, there is an inconsistent approach between "retail" and "Wholesale". Both these terms are clearly key elements of the new Direction and should therefore be defined.

We have responded to the specific questions raised in this consultation and this response is included as Annex 1 to this submission.

Please do not hesitate to contact me if you would like to discuss the above further.

Yours sincerely

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Ceri Owen

Regulatory Specialist