

Review of the Metering and Billing Direction A further consultation on revisions to the Metering and Billing Direction

Response by KCOM

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KCOM Group delivers communications services to a range of businesses and consumers throughout the UK under a number of different brands. Kcom provides communications services for national multi-site enterprise and public sector organisations across the UK. In Hull and East Yorkshire, KC provides a range of communications services to businesses and consumers. Nationally, Eclipse Internet delivers a portfolio of internet based communications services with a focus on the SME market.

Our Total Metering and Billing System is approved under the 2008 Ofcom Metering and Billing Direction and we provided comment on proposed changes consulted on in February 2013 as well as participating in ongoing discussions with the Approval Bodies. As a provider of both retail and wholesale services and a purchaser of wholesale services, the proposed amendments to the 2008 Direction are of direct relevance to our business.

In general KCOM welcomes the changes proposed by Ofcom, in particular the removal of the tolerances and accuracy limits and the redrafting of the Direction to provide greater clarity and consistency in its application to different services. However, we do have concerns regarding wholesale services and in particular, the proposed time limits for the delivery of CDRs. We set out our comments below.

Question 1: We invite stakeholders' views on the proposed removal of target-based requirements across all retail services and evidence to support their views.

KCOM welcomes the removal of the target-based requirements across all retail services. These targets have become increasingly unworkable particularly in relation to business services. We believe that Ofcom's proposal will ensure that providers are focussed on fixing underlying issues which result in billing errors rather than on simply trying to minimise the total amount of errors in a given period. This begins to address a key issue we highlighted in our response to the February 2013 consultation, a need to ensure that there is a focus on continuous improvement. It also alleviates the concern we expressed that if target-based requirements were removed for large businesses only, compliance with the Direction could become more difficult (i.e. errors that were caught would be spread over a significantly lower volume of minutes).



Question 2: We invite stakeholders' views and evidence on the practicality of the proposed new timeframe for approval as set out in paragraph 5.1 of the draft new Direction.

We believe that the proposed new timescales for approval are practical.

Question 3: We invite stakeholders' views on whether the proposed revised definition of EPF would be workable. We also welcome any alternative suggestions for the definition.

Under the current Direction an Extraordinary Performance Failure is defined as "When performance exceeds four times the accuracy limit in any one month..." Ofcom proposes to redefine this as:

"An extraordinary performance failure is a clear spike in or movement away from the monitored performance, or capability to accurately measure performance in line with the documented Measurement Strategy (which requires CPs to identify and assess the risks to their TMBS for accuracy, impact and likely occurrence), that is distinguishable from routine performance measurements as a result of special or one off conditions."

KCOM agrees that with the removal of target-based requirements what constitutes an EPF needs redefining. We are broadly happy with the definition that Ofcom has proposed but note that for each CP what amounts to an EPF will differ depending on their individual circumstances, e.g. number of customers, total amounts billed etc. We would expect that defining this will be an iterative process undertaken by CPs with their Approval Body and that what constitutes an EPF may change over time to reflect changes to an individual CP's business.

Question 4: We invite stakeholders' views on the proposed timeframe for delivery of CDRs as set out in paragraphs 7.1 of the Direction. If you do not agree, please provide evidence to support an alternative approach or timeframe.

The inclusion of wholesale services in the scope of the Direction has historically been problematic. Previously it was the case that where there were CPs in addition to the retail CP involved in the supply chain, the retail CP was responsible for ensuring that the error rate for the whole chain did not exceed the specified limit. To address the issues this caused, Ofcom amended the Direction in 2010 to require each CP covered by the Scheme to meet the permitted tolerance levels set out in the Direction.

Previously we expressed the view that while agreeing that the error rates and tolerance levels are unworkable with regard to wholesale services, we had some hesitation with the removal of wholesale services from the scope of the Direction completely. KCOM has also in the past expressed concerns regarding the inclusion of services provided to resellers in calculating tolerance levels, in particular whether wholesale providers were required to include all reseller adjustments (whether the reseller has an approved TMBS or not) in their assessment of tolerance levels and within the £600 discretionary threshold. This point is relevant to our comments below with regard to the proposed 2 month time limit on provision of CDRs.



Our first issue in relation to wholesale services relates to when the Direction becomes applicable. In paragraph 3.1 of the Direction it states that “A CP is required to comply with this Direction if its Relevant Turnover for each mandatory service (as outlined in the Annexes) is more than £40,000,000 (exclusive of VAT and other taxes directly related to turnover).” However, in Annex C, paragraph 2.1, it states that “A CP providing Wholesale services shall apply for Approval of its TMBS when the relevant turnover from PATS exceeds £40,000,000 per annum (exclusive of VAT and other taxes directly related to turnover).”

Clearly these are inconsistent. When we asked Ofcom for clarification on this point, we were advised that it is the combined total of retail and wholesale relevant turnover which determines whether approval must be sought. We find this problematic. If this is the case then Ofcom is effectively including wholesale services within the definition of PATS even though they are not “publically available”. We also note that paragraph A3.3.1 of the current Direction states the following (emphasis added):

“A Communications Provider is required to comply with this Direction if its Relevant Turnover from End-Users contracted for **each** mandatory service (as outlined in the Annexes) is more than £40,000,000 on an annual basis (exclusive of VAT and other taxes directly related to turnover).”

We would appreciate clarification from Ofcom on calculation of the approval threshold and note the need to ensure consistency between the main body of the Direction and the Annexes.

In paragraph 4.20 of the consultation Ofcom sets out the view that in light of the time-limits for the delivery of retail bills to end-users, it would be appropriate to include a timescale requirement of 60 days for the delivery of CDRs to ensure the capability of CPs to deliver accurate retail bills within the required timescales (up to 90 days).

However, we feel this oversimplifies the retail requirements. In the current Direction, billing for “Delayed Events” provides that Chargeable Events (which are Events that give rise to a charge) may be delayed for a number of reasons “but shall be included in a Bill no later than:

- a) the next Bill, when Bills are rendered quarterly or less frequently;
- b) when Bills are rendered monthly, the fourth monthly Bill after the chargeable Events occurred; or
- c) where an End-User is not subject to a standard consumer contract and a prevailing bespoke contract exists it is permissible to specify in that contract the acceptable delay to Billing Events.”

This wording is replicated in paragraph 4.8.4 of the proposed new Direction.

Again there appears to be inconsistency between what is required by the general provisions of the Direction and what is included in Annex C which deals specifically with wholesale services. If we were to rely on the wording in paragraph 4.8.4 this would imply that if contracts with resellers permitted billing in timescales different to the predefined



rules then those contracts would have precedence. Yet the wording of paragraph 7.3 of Annex C suggests that all billing outside of the 60 day period would be unacceptable.

We query whether there is a distinction to be made here between delivery of CDRs and the actual billing of services, i.e. while CDRs must be delivered with a 60 day period, billing can take place outside of that period as specified in contract.

Finally, we return to our point regarding whether the Direction covers services provided to all resellers or only those provided to resellers who themselves are required to gain approval of their TMBS. KCOM believes it would be disproportionate to restrict wholesale providers to only being able to bill resellers for CDRs delivered within 60 days where there is no equivalent restriction on the reseller because they are not required to gain approval for their TMBS.

In summary there are situations where resellers are not limited by the retail billing time-limits imposed by the Direction, because they have bespoke contracts with end-users and/or are not required to seek approval of their TMBS. To impose a blanket time-limit on wholesale providers is therefore inequitable and will not in itself increase protection for consumers. To make it equitable any time-limit on the provision of CDRs would have to be managed on a contract by contract basis depending on the terms of the reseller and end-user contracts which is likely to be impractical. We therefore believe that no time-limit should be imposed in the Direction on the delivery of CDRs or the billing of wholesale services.

Question 5: We invite stakeholders' views on the proposed non-material changes to the Direction?

Overall we welcome the simplified structure of the revised Direction. We have no specific comments on the proposed non-material changes but would reiterate that the draft Direction needs to be reviewed for consistency, particularly between the main body and annexes. For example, we have highlighted above inconsistent wording regarding the inclusion of wholesale services when assessing the need for compliance with the Direction.

Question 6: We invite suggestions on these and other ways in which awareness of the Scheme can be promoted.

Previously we commented that although the Direction is designed to benefit and protect consumers, very few would have any awareness of the Direction and what approval of their provider's billing system means for them. Our view was that more could be made of this if the Direction were easier to understand.

Certainly we see the simplified structure of the Direction as aiding CPs should they wish to publicise the fact their billing systems have been approved. But ultimately it is for individual providers to decide whether and how they wish to do so. An Ofcom consumer guide to billing which references approval under the Direction may also assist in promoting awareness.

