

CABLE&WIRELESS RESPONSE TO OFCOM'S REVIEW OF QUALITY OF SERVICE INFORMATION

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Cable&Wireless

INTRODUCTION

Cable&Wireless welcomes this opportunity to comment on Ofcom's proposals regarding the provision of quality of service information to customers and the future of the 'TopComm' scheme.

Cable&Wireless is one of the world's leading international communications companies. It operates through two standalone business units – Europe, Asia & US and International.

The Europe, Asia & US business unit (formerly known as the "UK" business) provides enterprise and carrier solutions to the largest users of telecom services across the UK, US, continental Europe and Asia, and wholesale broadband services in the UK. With experience of delivering connectivity to 153 countries – and an intention to be the first customer-defined communications service business – the focus is on delivering customers a service experience that is second to none.

Cable&Wireless has also recently acquired THUS plc, a leading provider of Internet, data and Telecoms services throughout the UK and with a major presence in the SME market. THUS plc has submitted a separate response which remains compatible with the opinions outlined here in respect of Cable&Wireless.

EXECUTIVE SUMMARY

- The current 'TopComm' scheme is not working and from inception has been fundamentally flawed in its attempts to balance business and residential consumer needs.
- Corporate businesses do not use TopComm. They exercise their buying power to obtain detailed granular statistics more relevant to their businesses through dedicated procurement processes. This class of customer should be identified and excluded from the scheme.
- Cable&Wireless supports the introduction of a combined subscriber and customer spend threshold whereby the requirement to provide data applies only to subscribers whose individual annual spend on telecoms services does not exceed £5,000, and where providers' participation in the scheme is mandatory only in the circumstances where those subscribers total more than 50,000 in number.
- A policy of regulatory forbearance should be applied to the current scheme and GC21, until any replacement scheme is in place.

Cable&Wireless has over 13 years experience of participation in TopComm and its precursor the Comparable Performance Indicators (CPI) scheme. It is with some disappointment that we note that it has taken the TopComm scheme, from inception, just under four years to reach exactly the same point as the CPI scheme when it folded. There are a number of valuable lessons that have not been learnt from the CPI scheme which need to be learnt in order to develop any useful and meaningful scheme in the future.

IS THERE A NEED FOR QUALITY OF SERVICE MEASURES?

This is not a straight-forward question. We recognise that the drivers in the residential sphere are very different and do suggest a requirement for quality of service measures. We confine our comments to the business market. Businesses both large and small tend to be more concerned with quality of service rather than purely basing decisions on cost. However in the large business market customers have the buying power to obtain all of the information they need through detailed procurement processes. As a result individual tender processes demand a detailed level of information that is far in excess of the high-level quality of service measures of the kind included in the TopComm scheme. A large business customer will not be interested in TopComm as it knows it need only request a series of data from dedicated account managers in order for it to be delivered. This will automatically be more up to date and relevant than a quality of service scheme can ever be. The same applies when tendering for new business, where detailed and often specific information requests are made. This is a message we have reiterated for much of the last 13 years, yet despite this, Ofcom's market research once again appears to be predominantly focussed on residential consumers.

It is clear that, after 13 years of publicly available information, if there really was a strong demand, the scheme would have established a regular user-base; regardless of promotion levels. This has not happened. We note that the Forum's brief attempt to interest commercial groups such as U-Switch failed to produce any interest; the CMA have been conspicuous by their absence during the entire scheme and even Which? withdrew their interest in fixed telecommunications and Quality of Service during the CPI scheme. We do not view this as convincing evidence that there is a demand for Quality of Service measures which can justify regulatory intervention.

RELEVANCE

When the CPI scheme was reviewed in 2003 by Oftel, the review was carried out as the current CPI scheme had *not maximised its effectiveness, one of the problems being a low level of consumer awareness*¹. The results at the time were issued in hard copy (150,000 copies) and published on the Ofcom website which averaged 77,000 hits per month with a peak of 140,000 after publicity carried out in the press by Ofcom². After four years the latest scheme has achieved a peak of 91,000 hits and an average of around 55,000 hits per month. (We note that this month's peak is somewhat misleading as the industry back door to the site which would have excluded industry hits

¹ . www.ofcom.org.uk/consult/condocs/qualitystate/qosoriginal/qos.pdf-pg8

² . www.ofcom.org.uk/consult/condocs/qualitystate/qosoriginal/qos.pdf-pg8

from the statistics has been unavailable due to the lapsing of the domain name. The previous peak was some 68,000 hits. We suggest that many of these were in fact industry related).

The issue with the current scheme is not just one of promotion, but as Cable&Wireless has argued for many years, one of the essential relevance of the information, particularly in the large business arena. If there is no intrinsic value in the measures themselves then industry will not promote the scheme. This is not, as Ofcom alludes to, due to some operators having poor performance. If the measures themselves had worth internally or to specific customer groups then even poorly performing operators would be compelled to defend their performance levels. At present performance, be it good or bad, is a complete irrelevance due to the limitation of the scheme to voice-only products and the fact that they are too generic to address any particular market.

One of the main complaints levelled at the current set of commitment based measures is that they are non-comparable. Operators may perform well against lenient targets or conversely may be seen to offer lesser levels of performance against a tighter timescale. Cable&Wireless' approach has always been the latter as we believe achieving a higher level of service is a great differentiator in the marketplace. However it is for reasons of comparability that the ETSI measures were originally rejected by the Forum as not being fit for purpose. Ofcom needs to improve the balance in any future scheme between compliance and true 'comparability' on the one hand and End-User accessibility on the other. Too often with TopComm the focus has been on a continual striving for exact comparability. This is not possible without a detailed product-specific level of detail that would instantly lose any chance of being comprehensible to the End-User. At its simplest level the provision of an indirect voice service via CPS and the provision of a multifaceted voice and data solution for a corporate company is fundamentally non-comparable in itself. Any future scheme needs to acknowledge that this balance may not always be possible or indeed desirable and that comparability to the nth degree may not be the best approach. The removal of corporate customers removes many of the more complex and bespoke solutions from the marketplace and would allow for a comparable scheme to be possible amongst small business customers.

CORPORATE THRESHOLDS

We acknowledge that removing large corporate customers from any Quality of Service scheme is not straight forward. However these measures are not used in this market and impose a disproportionate burden on Cable&Wireless and other operators in terms of Opex and resource without any attendant benefits. Furthermore we do not believe that the regulatory basis of the Quality of Service measures provides Ofcom with a legal basis upon which to enforce any requirement beyond the residential and small business market. We believe General Condition 21's drafting is inconsistent with Ofcom's obligations in the Communications Act 2003 and as a result we call for GC21 to be amended accordingly. We explore this in more detail in response to questions 4, 5 and 6 below.

Cable&Wireless believes that there may be a valuable role to be played by an Ofcom mandated scheme requiring the publication of Quality of Service information in the residential and potentially the small business market. Such a scheme can, we believe, be objectively justifiable. We have been content that the Topcomm scheme was implemented in an objective and transparent manner, but a lack of ownership by Ofcom has blighted its execution.

OFCOM OWNERSHIP

TopComm has from the outset been regarded as Ofcom's flagship co-regulatory scheme and yet it has been allowed to fail. Why?

It is Cable&Wireless' opinion that Ofcom failed to recognise that a *mandated* co-regulatory approach required Ofcom to provide clear direction to the group. This was a singular failure from the outset of the scheme. The Forum has struggled not only due to the large number of members, but also suffered from a continual drip feed of new members which led to constant repetition of issues as every new member revisited legitimate concerns. Without a strong guiding hand from Ofcom, and indeed in latter months an effective chairperson, the Forum has, inevitably for a body of such size, become mired in issues caused by conflicting industry interests. If Ofcom had wanted the ETSI measures to be implemented, however imperfect they may be, industry should have been directed to only create this scheme and not have been given the freedom and licence to develop what was considered by industry to be a more 'comparable' methodology.

Cable&Wireless welcomes the co-regulatory aspects of TopComm and is keen to participate in a similar manner in future initiatives. However the key failing Ofcom needs to address in any future Quality of Service scheme is that they need to provide strong and clear leadership in order to direct disparate industry and consumer body interests towards the desired outcome. Where there is evidence that a consumer requirement exists for Quality of Service information it is Ofcom's duty to ensure this information is provided to an adequate level and targeted where it is most needed. Blanket regulation that captures parties where no clear need for regulation exists will ultimately detract from the process of providing consumer information where it is most needed. As such Ofcom should be the driving force behind any developments, not merely an interested participant.

Ofcom needs to establish before the first meeting of any new scheme, what it wants to achieve, who it wants to take part and how *Ofcom* is going to support the scheme. TopComm failed partly because Ofcom:

- failed to have a clear picture of which companies should take part from the outset
- mandated compliance to the ETSI guidelines, then allowed industry (for valid reasons) to introduce their own measures;
- inadequately supported the scheme in any manner other than from a compliance perspective

Indeed we note that the one area Ofcom did insist upon and made clear to the Forum the scheme could not operate without, the appointment of a comparability auditor, has in this latest consultation mistakenly been attributed to a Forum initiative.

Ofcom must address all of these issues before any new scheme can be launched.

FORBEARANCE

In order to allow for all the current weaknesses with the Quality of Service scheme to be addressed Ofcom should implement a period of regulatory forbearance in relation to General Condition 21. Any future scheme under Ofcom's proposals will involve a number of new operators who will need familiarising with the scheme, in addition it is likely that existing members will need to utilise the same resource maintaining the current scheme in the development of new measures.

Cable&Wireless also believes that the legal underpinning of General Condition 21 needs to be revisited particularly in relation to large business customers. We call for a period of forbearance to allow Ofcom to amend General Condition 21 and to bring it into line with Ofcom's powers as set out Communications Act Section 52 (6) and to only apply this regulation to residential and small business consumers.

In summary we believe in any future Quality of Service scheme should:

- Amend General Condition 21 to bring it in to line with Ofcom's obligations under the Communication Act 2003 and only apply GC21 to residential and small business consumers.
- Exclude large business customers and target those areas where Ofcom has clear evidence that quality of service information is required to address a consumer need. Where this evidence does not exist the default position should be that regulation should be disapplied.
- Implement revenue and subscriber thresholds per reporting product area in order to exclude these corporate customers and to also ensure Communication Providers in this market are not inadvertently caught by the scheme.
- Implement a policy of regulatory forbearance until such time as any new scheme is in place.

We have answered Ofcom's specific questions, where they are relevant to our position in further detail below:

**QUESTION 1:
DO YOU HAVE ANY VIEWS ON OFCOM'S PROPOSAL TO REVIEW THE EXISTING TOPNETUK SCHEME, WHICH COULD HELP INFORM THIS PIECE OF WORK?**

Cable&Wireless acknowledges the benefits in terms of efficient regulation that may be gained by implementing a unified approach to both the TopComm and TopNet schemes. We also believe that it offers consumers the best solution to have both sets of information accessible from a single location.

Ofcom must be clear as to which companies the TopNet scheme covers. We believe that this should continue to be the major mobile networks. However in a converging market we caution that if the scheme requirements are not clear from the outset there is a risk that any new scheme may capture nascent and emerging products. Cable&Wireless has recently launched a Fixed Mobile Convergence (FMC) product, primarily in the corporate marketplace. This operates in a manner akin to a fixed line when the user is within their office and then roams onto the mobile network when outside the building. Should corporate companies remain part of the scheme, or should Cable&Wireless' target market expand any requirement to report alongside established mobile networks would not only be entirely non-comparable to consumers using the site, but in regulatory terms we contend it would be unjustified and disproportionate until a relevant threshold of subscribers was reached. Ofcom must ensure that such mechanisms are in place and flexibly applied across each of the product areas.

**QUESTION 2:
TO WHAT EXTENT WOULD IT BE USEFUL FOR CONSUMERS TO HAVE ACCESS TO COMPARATIVE PERFORMANCE INFORMATION ON BROADBAND SPEED AND BROADBAND QUALITY OF SERVICE?**

We refer Ofcom to our previous comments as to the unsuitability of comparative information in relation to corporate customers. Ofcom must supply an evidence-based need for applying regulation. We acknowledge that this has been done in relation to the residential consumer market, but it appears to be lacking in terms of business. We would suggest that after 13 years of Quality of Service reporting the fact that we are still asking whether it is needed in the large business market tells its own story. If large business were interested in obtaining this high-level information, all Communications Providers would be bending over backwards to supply it. The demand simply hasn't been there and the anecdotal evidence Cable&Wireless does have has always revolved around the fact that the information has not been relevant to that particular customer's business.

In terms of broadband information specifically we would caution Ofcom that a clear definition of what is meant by Broadband is required. Cable&Wireless provides Broadband services primarily as a means of access for its services rather than the residential style LLU offerings. As such it is difficult for a generic term such as Broadband to be given particular identification within the company. If large business customers are removed from the scheme then the issues this causes to a quality of service scheme are reduced, however they are not removed completely. In a converging market

combined voice and data solutions may also be offered to medium enterprises. Ofcom needs to be very clear as to whether their intention is only to capture the 'residential-style' broadband offerings.

**QUESTION 3:
DO YOU AGREE WITH OFCOM'S PROPOSED TIMETABLE FOR PHASE ONE OF OUR REVIEW OF
QUALITY OF SERVICE INFORMATION?**

Cable&Wireless believes that a period of regulatory forbearance should be put in place until the implementation of any new scheme. Ofcom acknowledges that the current scheme is underutilised so any threat of consumer harm from this period of forbearance is extremely low. Indeed TopComm is about to publish the latest set of data which will serve to cover any interim period before a new scheme is launched.

This is a model that Comreg saw fit to use in relation to the MLOP scheme, of which Cable&Wireless was a member, when the regulatory scheme was withdrawn for many of the failings outlined in this document. We note that it has yet to be reinstated in any form. Indeed it is our understanding that a number of National Regulatory Authorities (NRAs) such as ComReg (Ireland), RegTP (Germany), and OPTA (Netherlands) have withdrawn similar schemes. The key reason given is that the schemes are a disproportionate cost burden on Communications Providers and that they do not achieve the intended purpose. We urge Ofcom to take a similar approach as it explores options for any new quality of service scheme.

This is particularly relevant at this time as any future measures will bear little resemblance to the existing TopNet or TopComm schemes and due to the disruption the number of new Communications Providers from the Mobile and Broadband markets will inevitably bring to co-regulatory discussions. We advise Ofcom to start any new scheme with a 'tabula rasa' and not to risk becoming embroiled in previous failures.

A period of regulatory forbearance on the current failing scheme appears to be the best way in which to achieve this particularly as in the current economic climate all operators have constrained resource. In most cases the resources needed to maintain the existing scheme and those needed to develop new measures will be the same. With this in mind Ofcom should impose a period of regulatory forbearance in which to implement any new scheme.

**QUESTION 4:
SHOULD OFCOM REQUIRE INDUSTRY TO PUBLISH QOS INFORMATION?**

**QUESTION 5:
SHOULD OFCOM ENCOURAGE THE DEVELOPMENT OF MORE OR MORE DETAILED CONSUMER
SURVEYS FOCUSING ON CUSTOMER SERVICE?**

**QUESTION 6:
IF WE CONSIDERED IT WAS APPROPRIATE TO CONTINUE REQUIRING INDUSTRY TO COLLECT
AND PUBLISH QOS INFORMATION, IS THERE ANY NEED TO AMEND THE EXISTING QOS
DIRECTION?**

Cable&Wireless is aware that in a number of companies Quality of Service reporting has become something of a cottage industry. This has become increasingly evident in the decision making of the TopComm Forum and is regrettable. It is Cable&Wireless' opinion that Quality of Service measures should be applied only where there is a demonstrable need to do so. Indeed we believe that this forms the basis of Ofcom's powers when setting this regulation.

Cable&Wireless acknowledges that Article 22 of the Universal Services Directive requires Member States to ensure that NRAs are able to require communications providers to publish comparable, adequate and up-to-date information for end-users on the quality of their services.

However we note that the Communications Act Section 52 (1) and (2)(d) requires Ofcom to set such General Conditions *as it considers appropriate* about service standards for *residential and small business customers*. We also note that section 52(6) sets out the definition for what is considered to be a small business customer:

52 (6) In this section "domestic and small business customer" in relation to a public communications provider, means a customer of that provider who is neither –

- (a) himself a communications provider
- (b) a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise)

Cable&Wireless emphasises that at no point is there a requirement upon Ofcom to enforce Quality of Service reporting – merely to have the powers to do so, and to apply these powers as appropriate. We contend that in the large business market such a requirement is not appropriate for the reasons already outlined and a lack of evidence to the contrary. Furthermore there is an interesting parallel with the treatment of resellers within the TopComm scheme. These have always been excluded from the figures of Communications Providers and the TopComm scheme except where the reseller reports in its own right. Such an approach is perfectly in keeping with 52 (6) (a) which clearly exempts a 'communications provider', however it raises an interesting anomaly in the consistency of Ofcom's interpretation of the Communications Act and in particular 52 (6) (b) to date.

Cable&Wireless calls for Ofcom to apply this element of regulation in a consistent manner and to redraft General Condition 21 in order to remove any obligations upon large business customers.

QUESTION 8: WOULD THIRD PARTIES – SUCH AS PRICE COMPARISON SITES – BE INTERESTED IN COLLATING QOS INFORMATION?

This question is symptomatic of the dichotomy in the telecoms market, which any future TopComm scheme attempts to bridge. However a brief look at the two Ofcom accredited price comparison sites SimplifyDigital and Broadband Choices as well as the more well known U-Switch reveals that the emphasis is purely upon the residential customer. There is no mention of the business sector on any of these sites.

The experience of the TopComm Forum has been that there is no interest in the quality of service measures as they currently stand. It is our understanding that the only site that did display an

interest insisted on access to the raw-data; no doubt for access to the more valuable customer marketing information that they hoped it may contain. Cable&Wireless' fear is that any engagement with price comparison sites as they currently exist will be a case of business operators effectively being expected to subsidise a marketing tool for residential operators.

**QUESTION 10:
IF WE CONSIDERED IT WAS APPROPRIATE TO CONTINUE REQUIRING PROVIDERS TO PUBLISH QOS INFORMATION – AND THAT THE EXISTING QOS DIRECTION SHOULD BE AMENDED – WHAT TYPE OF REVENUES SHOULD THE THRESHOLD FOR PARTICIPATION BE BASED ON?**

**QUESTION 11:
IF WE CONSIDERED IT WAS APPROPRIATE TO CONTINUE REQUIRING PROVIDERS TO PUBLISH QOS INFORMATION – AND THAT THE EXISTING QOS DIRECTION SHOULD BE AMENDED – SHOULD WE EXEMPT PROVIDERS WITH LESS THAN A CERTAIN NUMBER OF SUBSCRIBERS FROM THE REQUIREMENTS?**

**QUESTION 12:
HOW EASILY COULD PROVIDERS ASSESS WHETHER THEY HIT A SUBSCRIBER THRESHOLD?**

Cable&Wireless believes that option 2, linking thresholds to 'relevant revenues' is the most appropriate. However this should be applied further and the threshold should apply to each reporting element e.g. a threshold relating to Fixed Voice, Broadband or Mobile individually rather than at an aggregate level.

Ofcom estimates the cost of participation in TopComm to be between £14,000 and £38,000 a year. Cable&Wireless has calculated the Opex used in participating within the TopComm scheme (reporting, auditing and attendance of the Forum) and can confirm that the figure falls within the middle of this range. This is a considerable burden for any operator, not just in terms of money but perhaps more importantly resource which could be actively employed in other customer related activity.

Cable&Wireless strongly supports the methodology behind the UKCTA submission which calls for a combined subscriber and customer spend threshold whereby the requirement to provide data applies only to subscribers whose individual annual spend does not exceed £5,000, and where providers' participation in the scheme is mandatory only in the circumstances where those subscribers total more than 50,000 in number. We fully endorse this proposal where the assumption is that 'subscriber' is defined in line with the definition given in the General Conditions:

"Subscriber" means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services;

Cable&Wireless can determine its number of subscribers on an annual basis relatively easily, but we are aware that this may not be the case for every Communications Provider. We urge Ofcom to use this approach as a guideline to participation rather than as a rigid trigger mechanism. In many cases rigid application of a revenue threshold will either leave operators with a small subset of

customers on which they are forced to report or a costly exercise to remove a small subset of customers which exceed the revenue threshold. Ofcom should take the lead to determine where its target End-User base lies and to ensure it is this group which receives the necessary information, be they small business or residential focussed. There needs to be a bilateral discussion between individual operators and Ofcom as to the exact mechanics of how such subscribers are calculated and rather than an inflexible trigger obliging an operator to report. Any operator wishing to voluntarily report should be allowed to do so.

**QUESTION 13:
IF WE CONSIDERED IT WAS APPROPRIATE TO CONTINUE REQUIRING PROVIDERS TO PUBLISH QOS INFORMATION – AND THAT THE EXISTING QOS DIRECTION SHOULD BE AMENDED – WHAT SHOULD THE RELEVANT TURNOVER THRESHOLD BE?**

Cable&Wireless believes that the relevant threshold figure needs to be set by Ofcom from the revenue figures supplied to Ofcom by Communications Providers on an annual basis. The current threshold figure of £400 million per annum corresponds with the TMBS scheme and for that reason may be an appropriate level, however it may not correspond with Ofcom's desire to capture the most appropriate operators to meet its consumer information aims. For that reason it is entirely for Ofcom to decide the relevant revenue threshold.

**QUESTION 14:
IF WE CONSIDERED IT WAS APPROPRIATE TO CONTINUE REQUIRING PROVIDERS TO PUBLISH QOS INFORMATION – AND THAT THE EXISTING QOS DIRECTION SHOULD BE AMENDED – HOW COULD THE INFORMATION REQUIREMENTS BE DEFINED AND MEASURED?**

Cable&Wireless does not believe that the definitions and metrics should be enshrined in detail within the General Conditions. We note that Ofcom's signalled intention for the Codes of Practice in GC14 is to move away from micro-regulation and instead to provide high level principles. Including detailed quality of service measures within the General Conditions would be a significant and inconsistent step with this desire. The likely outcome is that Ofcom would become bogged down in constant revisions or the scheme would quickly become irrelevant through a complete lack of flexibility.

The main amendment to General Condition 21 should be to enact the refocusing of the scheme to residential and small business customers only as discussed above.

**QUESTION 40:
IF WE CONSIDERED IT WAS APPROPRIATE TO CONTINUE REQUIRING PROVIDERS TO PUBLISH QOS INFORMATION – AND THAT THE EXISTING QOS DIRECTION SHOULD BE AMENDED – WHO SHOULD QOS INFORMATION BE PROVIDED FOR? SHOULD THIS INCLUDE LARGE BUSINESS CONSUMERS?**

**QUESTION 41:
WHAT EVIDENCE DO YOU HAVE THAT SMALL AND LARGE BUSINESSES WOULD / WOULD NOT
BENEFIT FROM QOS INFORMATION?**

**QUESTION 42:
WOULD INFORMATION ON ONE OR MORE PARTICULAR SERVICES BE MORE OR LESS
VALUABLE FOR DIFFERENT SIZES OF BUSINESSES?**

No, Cable&Wireless does not believe that any quality of service requirement should include large business customers. As set out above, we do not believe that Ofcom has the legal powers in regulation to enforce regulation on the large business community. Nor do we believe that there is any evidence to warrant the enforcement of such burdensome regulation.

The only evidence Cable&Wireless has to offer in this regard is anecdotal from sales and account managers who have discussed CPI and TopComm information with customers during bids or reviews over the reviews. Such information usually reflects on the general lack of relevance of the measures to the specific customer. After 13 years Cable&Wireless remains unable to identify a single customer who regularly or actively uses any of this information. We understand that some Communications Providers use this information in customer bids, but as we have already discussed in the large business arena these are the very customers that have the ability to demand even more detailed information from their supply or a potential supplier.

**QUESTION 43:
COULD REPORTING INFORMATION FOR SMALL AND LARGE BUSINESSES TOGETHER BE
MISLEADING?**

This is one of Cable&Wireless' greatest contentions with the current TopComm scheme. Ofcom has striven to produce a comparable set of measures in the suggestions for the future of the scheme, but it is unavoidable fact that the only way to produce a perfectly comparable set of measures would be to do so at the product level. There is little point in comparing the performance of Cable&Wireless in providing a major UK call centre with full connectivity and IVR functionality with THUS providing CPS to a small corner shop. Similarly at an aggregate level Cable&Wireless and other large business centric CPs will never be comparable with the reseller market and smaller operators such as, for example, XLN.

At an operational level the differences in the measures are stark. As an example the provisioning time for an IVR feature for a call centre can be literally a matter of minutes, with SLA's of a few hours; CPS is largely automated and often takes a couple of days; in comparison providing directly connected voice services to a new store may involve timescales of weeks. Any operator involved in providing a significant proportion of their business at the large business end of the market, of which Cable&Wireless is one, will be penalised in time-based measures when compared against operators specialising in the simpler indirect voice market. This is why the original time-based ETSI measures were rejected by the TopComm Forum – they are intrinsically non-comparable. Only commitment based measures could allow the entire market to be covered and to be broadly comparable.

It may be argued that the sheer volume of indirect provisions may dilute the non-comparability of an operator's direct installations by providing the bulk of the provisions captured within the fastest 85% of orders provisioned. However if this is the case it is in itself misleading to the large business community who are less likely to be interested in the indirect portfolio and may be misled by the apparently shorter than expected timescales of an operator.

**QUESTION 44:
HOW COULD OFCOM DISTINGUISH BETWEEN SMALL AND LARGE BUSINESSES?**

Cable&Wireless is aware that the UKCTA response has called for a "combined subscriber and customer spend threshold whereby the requirement to provide data applies only to subscribers whose individual annual spend does not exceed £5,000, and where providers' participation in the scheme is mandatory only in the circumstances where those subscribers total more than 50,000 in number". We agree with the principles behind this approach and that this should be applied to each of the service areas: fixed-voice, mobile and broadband.

We do not have any comments as to whether £5,000 is an acceptable revenue threshold for all operators, previously we believe that the best approach is to use a revenue and subscriber threshold in tandem and to use these as guide to whether an operator should take part in the scheme.

**QUESTION 45:
HOW EASY WOULD A THRESHOLD BASED ON THE COMMUNICATIONS ACT DEFINITION BE TO IMPLEMENT AND HOW MUCH WOULD IT COST?**

Cable&Wireless is aware that various industry members have voiced concerns that they are unable to distinguish the number of their customers' employees. As a result it is clear that basing a threshold upon the Communications Act definition of under ten employees is unworkable.

**QUESTION 46:
HOW EASY WOULD A THRESHOLD BASED ON A BUSINESS CUSTOMER'S ANNUAL COMMUNICATIONS SPEND BE TO IMPLEMENT AND HOW MUCH WOULD IT COST?**

Again this is an imperfect proxy in isolation. It is possible to segregate customer spend according to the previous year's turnover. However this would involve a fixed list of customers and does not take account of new customers joining during the period of the year. As a result it is only an indication of compliance threshold rather than something that could be used to actively segregate customers.

It also risks causing issues where a provider may be left with a small number of customers that fall within the threshold and should be reported upon, despite the fact they represent a small proportion of the companies' activity or conversely a Communications Provider with a large number of qualifying customers may be forced to identify and remove a small number of customers which do not qualify.

As set out previously, Cable&Wireless believes a financial threshold should be set alongside a subscriber threshold and that the two work in tandem. We believe these thresholds should be guidelines and that individual operators should have bilateral discussion with Ofcom as to whether they are to be captured by the scheme once they approach these thresholds.

**QUESTION 47:
HOW EASY WOULD A THRESHOLD BASED ON WHETHER A BUSINESS HAD A BESPOKE SERVICE LEVEL AGREEMENT IN PLACE WITH ITS PROVIDER BE TO IMPLEMENT AND HOW MUCH WOULD IT COST?**

Cable&Wireless does not believe that this is a workable solution or that such details can be readily accessed and maintained for the purposes of Quality of Service.

**QUESTION 48:
AS A PROVIDER, DO YOU INTERNALLY AUDIT INFORMATION ON QUALITY OF SERVICE? WHAT DATA DO YOU AUDIT AND HOW MUCH DOES THIS COST?**

Our comments in respect of auditing reflect our experience from the current TopComm scheme.

Yes, Cable&Wireless does internally audit all of its quality of service information. The exact cost is difficult to quantify as the audits are normally used to also incorporate other requirements such as ISO registration and in certain areas TMBS. Cable&Wireless confirms that Ofcom's estimates as to the cost of audit activity appear to broadly accurate and in line with our own figures.

As TopComm is such a small subset of Cable&Wireless' business the TopComm audits themselves do not provide a robust indication of company performance as a whole and therefore have little independent worth. It is possible to use such auditing to drive improvement within a business, but only where this reflects the operators' business model.

**QUESTION 49:
IF A MEMBER OF THE TOPCOMM SCHEME, DID YOU INTERNALLY AUDIT INFORMATION ON QUALITY OF SERVICE PRIOR TO THE IMPOSITION OF THE SCHEME AND WHAT, IF ANY, ADDITIONAL AUDITING COSTS DID YOU INCUR AS A RESULT OF THE SCHEME?**

Under the previous CPI scheme Cable&Wireless were audited externally by BABT and Energis (now owned by Cable&Wireless) employed Logica to carry out the same task. In terms of cost the TopComm scheme is likely to be lower, but this is largely due to the inclusion of data products in the CPI scheme which required a larger proportion of the business to be subject to audit. Oftel concluded that there was no evidence of need to continue reporting data under the TopComm scheme and hence the internal requirements contracted accordingly.

The CPI scheme involved a two-part audit process including external comparability. This was done remotely by BABT and was the source of the majority of cost concerns about audit requirements. The TopComm scheme aimed to address this by offering operators the option of internal audit and senior executive sign-off to reduce costs. We note that Ofcom attributes the appointment of the

comparability auditor to the wishes of the TopComm Forum. This is not strictly the case. Ofcom was particularly clear that in order for them consider the results of TopComm as being comparable and for operators to meet GC21 then a comparability auditor had to be appointed. Cable&Wireless rejects this requirement as being a disproportionate cost, particularly in the way that the scope of the comparability auditor is continually growing. Cable&Wireless has had experience of comparability auditing in relation to the MLOP scheme and the CPI scheme. In neither case were site visits a requirement of the comparability auditor unless there was a particular problem identified with a given operator's results. The TopComm comparability activity is rapidly taking the form of an external audit. This was never the intention and fundamentally undermines the original cost-saving reasons behind moving from a two-stage external audit to internal audit with external comparability – not internal and external audit.

**QUESTION 50:
IF WE CONSIDERED IT WAS APPROPRIATE TO CONTINUE REQUIRING PROVIDERS TO PUBLISH QOS INFORMATION – AND THAT THE EXISTING QOS DIRECTION SHOULD BE AMENDED – SHOULD OFCOM DETERMINE THE VERIFICATION PROCESS OR LEAVE IT TO PROVIDERS?**

**QUESTION 51:
SHOULD ANY VERIFICATION PROCESS INCLUDE EITHER AN INTERNAL OR INDEPENDENT AUDIT, OR BOTH?**

We do not believe that Ofcom's skills lie in this area. Nor do we believe that there is any evidence to suggest that Communications Providers need this level of supervision.

We would remind Ofcom that they do have the ability to audit operators where there is a particular concern and we do not believe this should change. However it should be done only where there is a clear need. We do not believe there is any evidence to date that this need exists other than to maintain an existing role.

**QUESTION 52:
IF WE CONSIDERED IT WAS APPROPRIATE FOR DATA TO BE AUDITED INTERNALLY, SHOULD INTERNAL AUDITORS BE REQUIRED TO POSSESS A RECOGNISED QUALIFICATION?**

**QUESTION 53:
WHAT WOULD BE AN APPROPRIATE QUALIFICATION FOR INTERNAL AUDITORS?**

It is important that a lead auditor achieves a suitable level of qualification. We do not believe that this necessarily means full IRQA certification, depending on individual experience. However we have found that it is often of great benefit to involve the operational areas themselves in 'checklist' auditing upon a weekly basis. This improves understanding of the scheme across the company and provides added insight from those individuals directly involved in the day-to-day processes. We do not believe that the ability for lesser qualified auditors to work in tandem with a lead auditor should be lost.

**QUESTION 63:
IF WE CONSIDERED IT WAS APPROPRIATE TO AUDIT THE DATA INDEPENDENTLY, WHAT MEASURES SHOULD AN INDEPENDENT AUDITOR TAKE TO VERIFY QOS INFORMATION?**

Cable&Wireless challenges Ofcom for the evidence that such a burdensome approach is required. There is no evidence that Cable&Wireless is aware of that any operators are involved in gaming of results and Cable&Wireless has no concerns in this respect. Indeed through the process of company consolidation that Cable&Wireless has been engaged in, some differences have become apparent across the various companies, but nothing to suggest that there has been anything other than an attempt to meet the requirements and spirit of the definitions.

**QUESTION 64:
TO WHAT EXTENT SHOULD OFCOM SPECIFY HOW AUDITS SHOULD BE CARRIED OUT?**

**QUESTION 65:
IF WE CONSIDERED IT WAS APPROPRIATE TO AUDIT THE DATA INTERNALLY AND INDEPENDENTLY, SHOULD WE AMEND THE EXISTING DIRECTION TO MAKE THE VERIFICATION PROCESS MORE ROBUST?**

It is not Ofcom's role to determine the detail of audits, unless there is a clear need to do so. Such intrusive regulation requires a strong evidential basis as to its requirement and we have yet to see anything to suggest such a requirement exists.

**QUESTION 66:
WOULD THERE BE SCOPE TO REDUCE THE COST OF SITE VISITS IF PROVIDERS USED THE SAME INDEPENDENT AUDITOR?**

This option was explored at the time TopComm was created. The need for a single auditor to visit all sites across all participating operators was felt by audit bodies to be impractical without the creation of larger dedicated teams. As soon as this is done, the benefit of a single auditor is lost and the costs become prohibitive. It is worth noting that there are very few audit companies with experience in this field, who would be able to cater for such requirements.

**QUESTION 67:
WHAT WOULD BE THE COST OF AN INTERNAL AUDITOR VISITING ALL SITES OVER A PERIOD OF A YEAR?**

As set out in response to question 48 this is difficult to quantify. We would question the need for such extensive auditing if results and previous audits have shown an area to be robust and there have been no changes over a period of time.

**QUESTION 68:
IF WE CONSIDERED IT WAS APPROPRIATE TO AUDIT THE DATA INDEPENDENTLY, HOW SHOULD ANY INDEPENDENT AUDITOR(S) BE APPOINTED?**

With hindsight this has been the TopComm Forum's greatest failing. The Forum failed to establish a clear mandate for its comparability auditor and allowed the position to mushroom without putting any of the employer / employee checks in place that would normally be expected. With hindsight the Comparability Auditor should have been treated as an employee and should not have had a seat in the general TopComm meetings. The remit should have been to conduct the audit requirements of the Forum and to report back on this and nothing more. This position was never crystallised and as a result as members of the Forum changes the fact that the Comparability Auditor was answerable to the Forum rather than the other way round was lost. As a result the Comparability Auditor's position became practically untenable, particularly when a proportion of the Forum attempted to reassert their control over the scope of the role.

Should any future appointment be required the position needs to be strictly managed to clear guidelines for the benefit of any co-regulatory group and any auditor themselves. All of the issues surrounding this position have resulted from the Forum's inability to recognise or co-ordinate their responsibilities as an employer.

**QUESTION 69:
IF WE CONSIDERED IT WAS APPROPRIATE TO AUDIT THE DATA INDEPENDENTLY, SHOULD PROVIDERS ALL APPOINT THE SAME INDEPENDENT AUDITOR?**

We refer Ofcom to our response to question 66. We acknowledge the benefits that may be elicited by such an approach, but do not believe that there is an audit body with the resources to carry this out.