

Ofcom Consultation

General policy on ensuring compliance with security duties

Neos Networks Limited's response
31 May 2022

Introduction

This document is Neos Networks Limited's ("Neos") response to the Ofcom Consultation General policy on ensuring compliance with security duties dated 8 March 2022 ("Consultation").

Neos is a B2B supplier providing a UK-wide network, offering a wide range of products and integrated solutions including leading edge WAN, Ethernet, Optical and Dark Fibre services. Neos provides its services via its own network and by utilising third party communication providers ("CPs") (in common with much of the telecommunications industry) and its customers include other CPs, (fixed and mobile) central and local government, public services and enterprise.

Confidentiality

This response may contain business secrets and could, if disclosed, cause serious harm to Neos business interests.

All information should therefore be treated as commercially sensitive and confidential and should only be used for the purposes of this Consultation and for no other purpose. If Ofcom wishes to disclose, refer to, use or share any of the information Neos have provided in this response, they should contact us for consent to do so which Neos may withhold.

Summary

Neos welcomes the opportunity to respond to the Consultation however our review has taken us longer than originally anticipated given the complexity. We are therefore responding on the basis of our observations to date.

Consultation Feedback

In this section Neos sets out its views resulting from the Consultation.

1. Tiering

- a. Neos agrees that some form of tiering for CPs is appropriate given that some smaller CPs will not have the necessary resources or funds to keep to the timetable expected for Tier 1 CPs.
- b. On the current tiering basis Neos would be in Tier 2 but under draft regulation 7 (4)(a)(ii) where a CP acts as a third-party supplier to another CP they must take security measures that are equivalent to those taken by the provider receiving their services.
- c. This effectively means that notwithstanding the tiering criteria, Neos would in fact be promoted to Tier 1 if we were to supply to a Tier 1 CP.
- d. We believe this could effectively make the tiering system irrelevant. The UK telecommunications market relies on CP's buying services from other CPs to fill gaps in their own networks, which means that Tier 1 CPs are often reliant on Tier 2 and in some cases Tier 3 to provide their own networks. Tier 2 CPs could of course only supply to Tier 2 or Tier 3 CPs but this would have a material effect on services and end users.

- e. Consequently, the impact of the timescales and costs of the tiering system on smaller CPs needs to be understood by DCMS and Ofcom especially in relation to supplying to Tier 1s.
- f. If a Tier 2 or 3 has to conform to the Tier 1 timelines and/ or regulations in order to supply a Tier 1, then the proposed tiering system will:
 - i. have a disproportionate and negative affect on the Tier 2 or 3 carrier's cost of business and compliance; and
 - ii. have a negative effect on competition in the UK telecommunications market as only those with the necessary resources will be able supply Tier 1 CPs and compete; and
 - iii. effect the government's own digital connectivity targets for the UK.
- g. Neos believes that the amount of time and money it would take Tier 2 CPs to keep to a Tier 1 timetable to be compliant has been underestimated. This would be even more dramatic for Tier 3 CPs. Tiering was intended to alleviate this issue but may be detrimental instead.

2. Auditing and testing

- a. Neos believes clearer guidance is required as to what is deemed a suitable framework for demonstrating compliance with the support of recognised international standards applicable to the organisation.
- b. We believe more clarity and guidance is required on how Ofcom intend to measure CPs performance, before the requirements come in to force so CPs can properly prepare.
- c. We also need to fully understand how Ofcom envisages CPs will show compliance, whether to other CPs or customers. Will there be any form of Ofcom certificate of compliance? Or will self-certification be expected/ permitted? Further guidance is required.
- d. Neos believes there should be flexibility in assessment of testing. CPs should not be required to duplicate adequate testing already in place.
- e. Neos would welcome more guidance on the consequences of failure to comply, particularly where it is a result of another CPs failure.

3. Supply chain

- a. The effect on the supply chain is a cause for concern given the complexity and depth of the global supply chain and the UK telecommunication industry's reliance on it.
- b. Contractual negotiations with suppliers are already complex and take up considerable resource and time under normal circumstances. Ofcom should not underestimate the issues requiring resolution, with both current and future suppliers to ensure compliance.
- c. As already mentioned, Tier 3 CPs who may supply Neos, may be promoted to Tier 1 if we in turn supply a Tier1 CP. These smaller CPs will then have to comply with Tier 1. Neos is not confident that some Tier 3 suppliers are even aware of the requirements or indeed if they are, will have the resources to reach that level of compliance within the required timescales. This increases pressure on Neos to find new and relevant suppliers to support our own CP customers.
- d. Does Ofcom believe there is a suitable fall-back position if a supplier is not compliant, especially where this results in another CP becoming non-compliant itself?
- e. Neos would also like more clarity on how to ensure suppliers are compliant and our rights to audit those them. Will this simply be contractual rights between the parties or are there other options Ofcom are considering?

4. Timescales, resource and costs

- a. Neos is a relatively small CP with limited resources. It is anticipated that Ofcom will undertake significant information gathering, using Section 135 notices and Neos, together with other similar organisations does not have readily available resource to dedicate to responding to these requests.

- b. Timescales are already very tight, however, for smaller CPs, with limited resources even implementing these changes under the Tier 2 timescales will take up considerable time and resource, disregarding the possible effect of being promoted to Tier 1.
- c. Implementation of these regulations will divert valuable resource away from “business as usual” tasks and affect our ability to invest in and deploy our networks and provide new and maintain existing services to our customers.
- d. The added burden of additional reporting and responding to the numerous statutory information requests that have been hinted will have a disproportionate impact on smaller CPs who do not have large teams ready to deal with them. It will mean diverting resource from other areas of the business which may have a detrimental effect on the quality of service we provide.
- e. Consequently, the impact of the timescales and the tiering system on smaller CPs needs to be understood especially in relation to supplying to Tier 1s.
- f. If a Tier 2 or 3 has to conform to the Tier 1 timelines and/ or regulations in order to supply a Tier 1, then the proposed tiering system will:
 - i. have a disproportionate negative affect on the Tier 2 or 3 carrier’s cost of business; and
 - ii. have a negative effect on competition in the UK telecommunications market as only those with the necessary resources will be able supply Tier 1 CPs and compete.
- g. With regard to legacy networks or technologies, replacing assets before the end of their useful economic life, will reduce investment available for alternative opportunities.

5. Data Security

- a. Ofcom has acknowledged the risk of becoming a central risk point when obtaining and storing sensitive security-related documentation. Neos would welcome greater clarity from Ofcom on how information will be transferred and stored securely.

6. Complexity of reporting

- a. With several competing and often overlapping reporting obligations for telecoms operators in the UK already in place (GDPR, the Telecoms Security Act and the NIS Regulations) we would request Ofcom and DCMS consider, whether a more streamlined or centralised reporting approach could be considered.

Conclusion

Neos believes the regulations will have a significant impact on its business, particularly in relation to the issues that we have highlighted. These include:

1. Significant costs implications.
2. Impact on the quality of services we provide our customers.
3. Resource issues, especially where people may have to be diverted from their day jobs.
4. Ability to compete.
5. Managing the supply chain effectively.
6. Data security and reporting

As a result, we would request Ofcom reconsider their plans and work with DCMS, especially in relation to levelling up the playing field for Tier 2 and 3 CPs and give them the additional time needed to budget and implement the regulations adequately.

We believe there is a sensible balance required for smaller CPs, without the need to compromise security, whilst ensuring continuity of service to customers. CPs should at least be shown leniency when enforcement is considered if they have made every effort to comply. This is especially relevant at this time with high inflation, global supply chain issues and the real prospect of smaller CPs going out of business, all without the additional burden of complying with these new requirements.



We also believe it is sensible for CPs to concentrate their limited resources on becoming compliant rather than responding to high volumes of requests for information.

We would be happy to engage further if required.



Neos Networks Limited
31 May 2022