



Automatic Compensation
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By email to:
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5th June 2017

Dear Joanna

Automatic Compensation

SSE provides a retail fixed line phone and broadband service to consumers in Great Britain, based on the wholesale products available from other Communications Providers (CPs). Ofcom's proposals on automatic compensation for consumers in relation to these products would clearly affect our business and we have previously contributed to Ofcom's call for inputs on this topic, drawing on our experience in the UK energy industry, which is SSE's main area of operation.

SSE supports the principle of consumers being protected by a framework of guaranteed standards, provided that this is implemented in a fair and comprehensive manner, such that all relevant CPs involved in the supply chain of relevant services to consumers are covered by the arrangements. We continue to believe that compensation payments should originate from the CP causing the issue affecting a consumer and, as necessary, be passed down the wholesale supply chain if it is the consumer's retail CP that is to make the actual payment to the consumer. This is the way that relevant guaranteed standards work in the electricity, gas and water industries and we see no reason why that principle should not also apply in the communications industry.

We still have concerns, from the perspective of retail-only CPs, about the framework that Ofcom proposes for compensation. We welcome the comments Ofcom makes in its discussion in section 8 about the 'retailer pays' proposal that the party responsible for the quality of service problem should bear the cost of retail level compensation and recognise that Ofcom has outlined an approach for industry to engage with BT Openreach with the objective of negotiating upstream Service Level Agreements (SLAs) and Service Level Guarantees (SLGs) that mirror retail level compensation arrangements. However, there are uncertainties in this proposed process and, in particular, the ability of BT Openreach to avoid SLG payments due to 'matters beyond our reasonable control' (MBORC) is not proposed to be mirrored as an exemption to the retailer's proposed obligation to pay retail compensation. This is unfair to retailers.

While we understand that the legal frameworks are different between energy, water and communications industries such that directly imposing a retail compensation obligation on 'upstream' wholesale CPs may be problematic, there must be other ways of achieving the objective (that Ofcom states that it supports) that compensation payments originate from the party causing the issue.

It seems clear to us that the BT Openreach SLA/SLG framework must be wholly and unambiguously aligned with any retail compensation scheme due to the dependence of most of the industry on wholesale services from BT Openreach in this market. Ofcom is aware that many retail CPs depend on BT Openreach wholesale services in their supply chain and also that many of these companies are small compared to the revenues generated by BT Openreach, such that any mis-matches in compensation obligations compared with BT Openreach SLG obligations would, relatively speaking, bear far more heavily on retail CPs, particularly where payments are proposed to be uncapped. This situation could be described as anti-competitive, as it would add significant commercial risk to existing retail CPs and perhaps act as a barrier to entry. We note the comments from ITSPA referred to at paragraph 8.45 of the consultation that an outcome whereby retailers are required "to pay for their wholesaler's faults could bankrupt some small providers": this cannot be an outcome that Ofcom would wish to see.

Our final general point with respect to the proposals relates to efficiency. There will be a significant burden on all retail-facing CPs to implement information flows and IT systems to link service issues with payment mechanisms. It is not the case, as Ofcom appears to suggest at paragraph 8.47, that a retail CP already holds all the relevant information about appointments not being met, repairs not being completed and new services not being provisioned if these are being fulfilled by an upstream CP such as BT Openreach. Currently, it is the affected consumer that informs the retail CP of the service problems in many cases.

We would therefore suggest, in relation to the proposed industry negotiation process and the proposed monitoring requirements, that account be taken of whether centralised information flows could minimise the costs to industry overall. It may well be the case, in our view, that a greater investment in information systems and reporting 'at the centre' by BT Openreach could reduce the amount that each individual retail CP has to invest. In the case of monitoring figures, for example, BT Openreach will often have the source information on service quality incidents, relevant numbers of days and SLG payments generated per retail CP. It could be the case that centralising monitoring of incidents caused by BT Openreach would be the most efficient approach, with retail CPs reporting on just the compensation incidents that they cause. This would also align with a legitimate objective of the whole compensation framework, which is to incentivise the CPs that are causing service quality issues to improve the service quality they deliver – in this context, by arranging for monitoring to focus on the issues that each CP causes.

The appendix to this letter sets out our response to some of the consultation questions, drawing on the above main points, as relevant.

Yours sincerely

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Response to consultation questions

Question 1: Do you agree with our framework for assessment?

Question 2: Do you agree that in landline and broadband markets consumers are insufficiently protected from poor quality of service and that intervention is required?

Question 3: Do you agree that it is appropriate for automatic compensation to be introduced for landline and broadband consumers?

As noted in our covering letter, SSE supports the principle of reasonable compensation for service failure being made to landline and broadband consumers provided that a suitable industry-wide framework is established such that retail payments are backed by upstream payments where the fault lies with upstream CPs.

Question 4: Do you agree with our proposal to provide automatic compensation when a loss of service takes more than two full working days to be restored?

Question 5: Do you agree with our proposal to provide automatic compensation when there are delays in provisioning a landline or fixed broadband service?

Question 6: Do you agree with our proposal to provide automatic compensation when missed appointments take place with less than 24 hours of prior notice?

We agree that these are the sort of service failures where compensation should, in general, be payable. However, for retailers dependent on services provided by BT Openreach, where BT Openreach can claim an exemption from the need to make payments for its part in the service failures, the same exemptions should also be able to be used by retailers. Otherwise, as discussed in our covering letter, there is unfair commercial risk added to retail CPs. We would note that the standards in the energy and water industries use exemptions from the need to make payments in various circumstances such as ‘exceptional/severe weather’ and that consumers are therefore used to the concept of such exemptions from the obligation to make ‘standards payments’.

We have one further comment on the matter of missed appointments. In our experience there are often circumstances where, for an appointment booked between our retail customer and BT Openreach, Openreach claim the customer was not there when they attended and yet the customer is adamant that they were. Currently, our retail business faces a ‘missed appointment charge’ from BT Openreach in these circumstances, which is difficult and time-consuming to challenge. If the proposed automatic retail compensation arrangements are implemented then we would also be liable for a compensation payment to the customer. We imagine that other retail CPs find similar issues and suggest that the proposed industry negotiation process with BT Openreach addresses the validation of missed appointments as part of discussions on this standard.

Question 7: Do you agree with our proposals on transparency?

Question 8: Do you agree with our proposals on the method and timing of payment?

The proposed requirement for the retail CP to make any payments due by means of a bill credit within 30 calendar days should, in our view, be amended to making an ‘account credit’ within that period in order to avoid any potential additional costs for retailers who have quarterly billed customers. Such customers have the benefit of an extended period of credit before they normally have to pay their bill and it would avoid disruption to the systems of retail CPs that offer this facility, if they can show any required compensation payment on the customer’s normal billing run for quarterly as well as monthly billed customers.

Question 9: Do you agree with our proposal not to have a payment cap (and our assessment of the reasons for and against it)? - If you consider there should be a payment cap, what should it be and why?

The main area of concern for SSE, as a CP using BT Openreach systems to provide its own retail services, is that any requirement for a retailer to pay consumers is backed by an equivalent wholesale obligation on BT Openreach to pay the relevant retail compensation sum where it has been the cause of the service failure. We note that Ofcom is planning to remove the caps on existing BT Openreach SLGs through the Wholesale Local Access consultation and has set the expectation for industry negotiations on developing the SLA/SLG regime – for example in paragraph 8.60 of this consultation – that BT Openreach “should meet the cost of retail level compensation in circumstances when it is at fault”.

This policy stance should mean that, if the retail compensation payments are uncapped then so will be the associated payment from BT Openreach, where it is at fault. We would be content with this, provided there is no risk of BT Openreach having the ability to deny payments to downstream CPs while retail CPs are exposed to an uncapped compensation payment for an issue which is not their fault. However, it seems to us that there are still uncertainties about the precise outcome of the proposed industry negotiation process with BT Openreach. We therefore advocate that Ofcom allows each retail CP to set a cap, based on its own perception of commercial risk represented by the final detailed cross-industry arrangements, on the total compensation amount payable under the proposed service areas where these accumulate by the day.

In this context, Ofcom notes at paragraph 8.21 of the consultation that compensation payments are capped in the electricity and gas sectors in certain circumstances and that such payments in the water sector are not capped. With respect to these sectors, it is also worth noting that the compulsory powers framework with respect to entry and use of land for the provision and maintenance of supplies is more established than in the communications industry. This means that, in the case of water companies, for example, they could be said to have a greater degree of control over the provision and restoration of supplies than network operator CPs.

Question 10: Do you agree with our proposed exceptions?

Question 11: Do you agree we should not allow for a blanket exception for force majeure-type events?

In SSE’s view, the generic exceptions from the requirement to pay compensation that are discussed at paragraphs 8.28-32 are reasonable as far as they go. However, as noted elsewhere in this response, we are primarily concerned with any potential mis-match between exceptions that BT Openreach can use in relation to its framework of SLAs/SLGs insofar as these are relevant to situations of retail compensation and the framework of exceptions that retail CPs can use. We are very concerned by Ofcom’s proposals not to allow a ‘force majeure’ type exemption at retail level in conjunction with the comments at paragraph 8.58 of the consultation that imply no intention to remove the ability of BT Openreach to use a ‘MBORC’ exemption in its SLA/SLG framework. This brings an immediate mis-match to the detriment of retail CPs, as discussed in our covering letter.

Ofcom’s own analysis of the responses to its call for inputs notes that consumer-aligned organisations accept the reasonableness of there being exemptions to the general requirement to pay compensation in some circumstances. A variety of exemptions are used in the frameworks for energy and water compensation payments and these often

include the impacts of such issues as severe weather. We believe that consumers will be used to the concept that exemptions may apply to the rules on payment of retail compensation. In our view, the important thing is to align the exemptions that BT can use in the SLA/SLG framework with those that retailers can use in making the compensation payments at retail level. We consider that this should be set out as a principle for the industry negotiation process that Ofcom has proposed.

Question 12: Do you agree with our proposal on complaints and disputes?

Ofcom proposes that any consumer concerns and complaints about the application of the compensation standards should be handled by the existing complaint handling framework, including the involvement of the Alternative Dispute Resolution (ADR) bodies to which retail CPs must already belong. SSE supports this approach but would argue that the decisions of these bodies in compensation-related matters should also bind BT Openreach in relevant cases. We suggest that consideration of this point is brought into the proposed industry negotiation process with BT Openreach so that the principle of the party responsible for the quality of service problem bearing the cost of retail level compensation payment extends to relevant decisions of the ADR bodies.

Question 13: Do you agree with the impacts we describe? Please wherever possible give your reasoning and provide evidence for your views.

We do not see much discussion of the impact of the proposals on commercial risks faced by smaller retail providers dependent on the wholesale services of BT Openreach. Throughout this response, we have drawn attention to these and proposed ways of mitigating them.

Question 14: Do you agree with our provisional conclusions on residential landline and broadband services?

Question 15: Do you agree with our proposal of 12 months to implement automatic compensation?

SSE believes that 12 months will be too short a period for implementation of automatic compensation arrangements. There are two main reasons for this. Firstly, the general timescales for budgeting, scoping, defining and implementing significant IT projects; and secondly, the existence of long chains of wholesale supply of services behind the retail provision of fixed line phone and broadband services.

Ofcom has proposed a 12 month implementation period based on the length of time it estimates as needed for an industry negotiation process with BT Openreach followed by a dispute resolution process. These considerations do not take account of the significant IT work that will be needed across the industry to enable the new information flows that will be necessary to allow retail only CPs using BT Openreach wholesale services to obtain timely information on the circumstances where they will need to make compensation credits and payments. Some details of this may well be linked to the industry negotiation process with BT Openreach, suggesting that clarity on all aspects of the IT systems required will not be in place until the end of the negotiation/dispute process with little or no time left thereafter for the actual IT-related work itself.

On the second point, Ofcom is aware that there are a range of different types and lengths of wholesale supply chain, involving a range of CPs and systems specialists that sit behind the provision of fixed line phone and broadband services. SSE itself does not contract directly with BT Openreach but takes services from other CPs who have a contractual relationship with BT Openreach and we believe that this is fairly typical of the wholesale

arrangements for a large number of retail only CPs. Once IT processes have been defined and implemented for the major wholesale players, including BT Openreach itself, there needs to be time for the linked IT processes to be defined and implemented down the various onward wholesale chains, as well as the development and roll out of training for staff at the relevant wholesale and retail interfaces.

A similar situation existed for the implementation of the change in switching arrangements for broadband on the BT Openreach platform, finally implemented in June 2015, having been specified in revised General Condition 22 in December 2013 with an 18 month implementation period. Ofcom became aware, through its involvement and that of the OTA in the implementation project, of the need to consider a range of wholesale supply chains and obtain assurance from relevant wholesalers that necessary system changes were being rolled out to their downstream customer CPs. While the implementation of automatic compensation is a different sort of project, there are set to be industry negotiations with the involvement of the OTA, which we welcome. There are thus also some similarities between the two projects. We would therefore urge Ofcom to consider carefully with the OTA an implementation period for this significant industry change that allows necessary IT work to be specified and completed across the multiple wholesale supply chains involved on the Openreach access platform. We consider that this would be likely to be at least 18 months.

Question 16: Do you agree with our proposal to monitor the impact of automatic compensation?

SSE agrees that some monitoring of the compensation framework is likely to be useful and believes that the monitoring should seek to identify compensation incidents and payment amounts with the CPs actually causing the service quality issues giving rise to the need for compensation. As discussed in our covering letter, we consider that the overall burden of reporting on the industry may be reduced if it is feasible for Openreach to originate the reporting on the incidents where it has been at fault.

Question 17: Do you agree with our proposals for greater transparency regarding service quality and compensation for products targeted at SMEs?

Question 18: Do you agree with our provisional conclusions not to introduce automatic compensation for delayed repair of mobile loss of service?

Question 19: Do you have any comments on the draft condition set out in Annex 14 to this document?

We do have comments on a few detailed aspects of the proposed Condition in Annex 14:

- In the payment paragraph CX.14, we have made comments above about crediting the customer's 'account' rather than 'bill' to avoid quarterly billing processes being disrupted by the 30 day payment timescale;
- In paragraph b) of CX.14, we suggest clarifying the phrase "that means" in subsection i) to refer to paragraph a);
- In the definition of 'Provision', we suggest clarifying paragraph b) where the customer is staying with the same CP to avoid including changes of tariff arrangements that do not involve changes of technology – for example, a change in the scope of inclusive calls – as these do not have to be 'provisioned' in the sense discussed in section 6 of the consultation. We suggest that this could be achieved by adding a qualification in brackets such as '(not including tariff changes on the same underlying service)'.