

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Automatic Compensation – Call for Inputs

To (Ofcom contact): Emma Chadwick

Name of respondent: Alex Mather

Representing (self or organisation/s): The Internet Telephony Services Providers' Association

Address (if not received by email):

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Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input checked="" type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
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Name Alex Mather Signed (if hard copy)



Internet Telephony Services Providers' Association

ITSPA response to Ofcom's Call for Inputs on Automatic Compensation

About ITSPA

The Internet Telephony Services Providers' Association (ITSPA) represents over 90 UK businesses involved with the supply of next generation communication services over data networks to industry and residential customers within the UK. Our traditional core members are VoIP providers. ITSPA pays close attention to both market and regulatory framework developments on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within both national and international markets.

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>

Introduction

ITSPA welcomes the opportunity to respond to the call for inputs on automatic compensation, published on 10th June 2016.

Please note that certain aspects of the ITSPA response may not necessarily be supported by all ITSPA members. Individual members may respond separately to this consultation where a position differs. However, the ITSPA Council is confident that this response reflects the views of the overwhelming majority of ITSPA members.

General Comments

ITSPA's response to the call for inputs focuses on two main areas which our members feel need urgent attention and clarification before any sort of automatic compensation scheme can be introduced. These are: the ongoing difficulties and challenges regarding the performance of Openreach (and the acknowledgement that much of the harm that Ofcom's automatic compensation proposals seek to address is in fact often caused, at some point, by Openreach); and also the need for Ofcom to ensure that automatic compensation arrangements for small businesses (under the Ofcom definition of those with 10 employees or fewer) is not identical to those for domestic users. Additionally, ITSPA's response highlights a number of difficulties with the implementation of such an automatic compensation regime and also unintended consequences.

Performance of Openreach and the need for reform

As Ofcom is already well aware and as was noted in the findings of the Digital Communications Review (DCR), the performance of Openreach has many shortcomings. Whilst ITSPA recognises and supports efforts to protect consumers from harm, it should be acknowledged that, in the provision of communications services, it is almost impossible not to rely on Openreach at some point.



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In our response to the DCR, we made clear our position on the performance failings of Openreach, and whilst we did not support full structural separation, we did encourage the introduction (and effective implementation) of financial penalties in the event of Openreach underperformance.

It is of fundamental importance that Ofcom consider that, in many instances, Openreach is likely to be responsible in some way for the situations where a retail communications provider would be forced to pay automatic compensation.

ITSPA therefore believes that it is essential that further details regarding the introduction and implementation of measures to improve the service performance of Openreach are introduced before any form of automatic compensation scheme enters into force.

Definition and inclusion of small businesses

Whilst we understand that Ofcom feels that some small businesses require the same protection as domestic consumers, ITSPA believes that many small businesses have greatly different requirements to residential users. For example, although some businesses may have similar requirements to individual users, others may prioritise factors such as latency and jitter rather than download speed. The introduction of an automatic compensation regime could provide an incentive for SMEs to purchase consumer-grade services, although these services would not be most suitable for their needs.

A small business's use of next generation telecommunication services is increasingly complex as they now have access to new technologies previously only available to very large corporations. These sophisticated new services involve equipment, functionality, connectivity and services from multiple providers. For example, a 10-person business may well take its broadband services from BT, its hosted PBX services and DDIs from one of our small members, its physical telephones from an independent retailer and its internal network may be provided and managed by a small local provider – or by themselves with little knowledge or training. It will routinely rely on the virtual PBX to provide cloud-based extensions, music on hold, call transfer functions, calling groups, interactive voice response systems and complex call routing plans. Often their telephony will be integrated into their back office systems and processes such as customer relationship management systems and call centre operations. These systems are in no-way comparable to or yet as reliable as a traditional single line, copper-based PSTN service from a single provider to a consumer.

Ofcom must also take into consideration that, in some cases, service outages affecting small businesses will occur due to the complicated network arrangements that they require. In other words, the internal set-up of their network may result in errors at no fault of the communications service provider.

Furthermore, some business consumers may not implement the best technical advice and most resilient solution. In this circumstance, it should be made clear to the customer that automatic compensation is waived.

ITSPA would also like to highlight the inadequate definition of SME that continues to be used by Ofcom. We feel that the definition of an SME as a business that employs 10 employees or fewer is unsuitable and it is difficult to understand why a small business of 5 employees would be eligible to receive automatic compensation, but a charitable organisation of 11 part-time volunteers would not be entitled to such compensation.



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Supply Chain Complexity for Next Gen CSPs

ITSPA feels that the complexity of the supply chain in the provision of next generation communications services may make it highly difficult to establish from where any compensation payment should originate. Many ITSPA members are new entrants to the market or small communications service providers (CSPs) who rely on providing their services over-the-top of others' data networks. These networks may have contracts in place with the End User themselves, and if there were an outage which affected a voice product, which was either or caused or exacerbated by the data network, it would be unclear as to which should pay compensation to the customer.

Impact on smaller ITSPA members

Some of the largest players in the next generation communications market are members of ITSPA, including BT and TalkTalk Business. However, many of our members are SMEs themselves and, if implemented in a certain manner, automatic compensation requirements could have a devastating impact on these companies. As mentioned, over-the-top providers could essentially be made bankrupt as a result of a fault in another company's end user relationship and in any event it creates an environment which is not inductive to investment in start-ups and has the potential to severely restrict competition and innovation in the industry.

Possible costs and risks of introducing automatic compensation

As Ofcom highlights within the consultation document, the introduction of an automatic compensation regime may have an impact on retail prices, negatively affecting consumers. It is even possible that a business of 11 employees would enjoy a disproportionately lower price to a business of 9 employees purely by virtue of the latter having the compensation priced in upfront. As previously mentioned, ITSPA welcomes Ofcom's focus on ensuring that consumer harm is reduced and that prices across the telecommunications industry do not rise unnecessarily. Indeed, ITSPA supported the Chief Executive of Ofcom's comments regarding the potential increase in prices had the proposed merger of O2 and Three gone ahead. We therefore urge Ofcom to take this factor into account to ensure that any regime introduced is proportional and does not negatively impact the consumer.

ADR

ITSPA should highlight that a strong system of alternative dispute resolution (ADR) is already in place across the industry and, from our members' experiences, it appears that this already favours consumers' interests rather than those of CSPs. It should therefore be highlighted that the existing strong ADR system means that there is less need for a regime of automatic compensation, and that Ofcom could perhaps consider the alternative of encouraging more prominent publicising of ADR schemes.

Conclusion

To summarise, although ITSPA continues to welcome Ofcom's measures to reduce consumer harm, it is vital that further details are provided regarding measures to improve the performance of Openreach before any automatic compensation regime is introduced.



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Additionally, Ofcom must take into account the complexity of the next generations communications landscape and the difficulties that this is likely to cause in the effective implementation of automatic compensation.

Finally, ITSPA encourages Ofcom to consider the potential negative impact that a poorly thought through automatic compensation regime could have on both competition and consumer prices across the telecommunications industry, and highlights the effective ADR system that is already in place.

ITSPA would welcome further dialogue with Ofcom on this important issue.