

PROPOSED NEW DUTIES FOR OFCOM ON RESILIENCE: SECONDARY INFORMATION

1. BACKGROUND

This document is in response to the request for consultation issued by the department for Business, Innovation and Skills on 15th September 2009.

Cable&Wireless is a Communications Service Provider that specialises in providing high quality communications services such as IP, data, voice and hosting to large enterprise and global carrier customers. This focus allows us to tailor our services to address their needs, making sure we deliver what these customers need - day in, day out. We operate around the globe, providing connectivity to 153 countries. Our core markets are the UK, Asia, Middle East and Africa. We have a particular strength in helping UK and European businesses expand into emerging markets, including India and South East Asia, as well as helping many of the rapidly growing businesses in these markets expand into developed markets in Europe and the US.

Any company wishing to remain competitive and successful must be protected, through the ability of the organisation itself, to continue profitably in the event of any serious business interruption. Ideally, Cable&Wireless would be able to continue all of its functions at ordinary service levels in the event of any incident or emergency, regardless of the nature or severity of the disruption. In practice this may not prove possible, and therefore Cable&Wireless has put in place arrangements to ensure it can continue all of its functions so far as is reasonably practicable.

The Communications Act 2003 is one of the main drivers for Emergency Planning within Cable & Wireless. With regard to Network Resilience and Emergency Planning the Act states that Cable & Wireless should;

- Take all reasonable practicable steps to maintain the proper and effective functioning of the public telephone network provided at fixed locations.
- Maintain availability of its public telephone network and publicly available telephone services in the event of catastrophic network breakdown or force majeure.
- On request by an emergency organisation or OFCOM, C&W shall make arrangements for the rapid restoration of communication services in disasters and implement such arrangements.

Cable & Wireless complies with these obligations as both good business practice and in support of the UK regulatory Framework.

2. RISK ASSESSMENT

1) Do you agree that Ofcom should have the power to require that electronic communications operators report to Ofcom on risk assessments carried out?

Cable&Wireless recognise risk as “An unplanned and undesirable circumstance that may occur at some point in the future and have a negative impact on, or pose a threat to Cable & Wireless, its infrastructure, services, staff, image or assets”. Risks and Issues need to be minimised and managed to achieve a companies business objectives. Gaining a clear understanding of the risks associated to the business should be perceived as being positive, as the effective management of risks reduces uncertainty and increases the likelihood of successful outcomes.

In order to compile and compare risk assessments carried out by a multitude of Communications Service providers, each offering a range of different services to a multitude of end-users with varying requirements, it would be essential to have a consistent set of definitions for what constitutes a Risk and the criteria and methodology for how Risk Assessment is conducted and reported. This should be done in conjunction with industry to ensure that it does not compromise existing Risk Assessment processes, many of which will be aligned to commercial requirements. Without consistency there would be little value in Ofcom being the recipient for this information.

In addition it should be noted that Cable&Wireless already carry out some level of Risk Assessment in conjunction with the Centre for Protection of national Infrastructure, CPNI. CPNI have also developed and issued, in conjunction with industry, a good practice guide to Resilience that is widely used by companies. Other reporting on resilience and risk assessment is reported to the Civil Contingencies Secretariat under Direction. It is unclear whether granting additional powers to Ofcom would duplicate, supplement or replace existing reporting practises. It is also unclear whether consideration has been given to placing this requirement with CPNI or CCS where there is a pre-existing level of expertise (as opposed to granting new powers to Ofcom).

Cable&Wireless recognises that it is in the National Interest for a single government entity to have visibility of risks pertaining to the entirety of the UK electronic communications networks. Cable&Wireless would have no objection to Ofcom having the power to require that electronic communications operators report to Ofcom on risk assessments carried out providing the above issues are considered.

2) Do you consider that Ofcom should have the additional power to require that further risk assessments be undertaken by relevant companies if those supplied are deemed insufficient. If so, how should this assessment process take place?

As noted in 1) above, this requirement is significantly reduced providing the definitions, criteria and methodology for Risk Assessment is consistent across all completing organisations. It is recognised that commercial realities will always dictate a degree of variation, but this should be minimal.

Cable&Wireless recognise and support the requirement for risk assessment and if the responses provided are deemed insufficient in relation to the MUTUALLY AGREED risk assessment criteria then additional powers to require further risk assessment should be available to the responsible government agency (whether Ofcom, CPNI or somewhere else). Note however that a high degree of capability and expertise will be required by Ofcom to interpret risk assessment in some cases; it should not be incumbent on the communications service provider to provide additional resource and effort (and hence cost) to overcome any shortfalls within the recipient organisation.

3) Should risk assessments be based on existing government processes?

Risk Assessment processes are embodied in a number of standards (such as the information security standard ISO27001 and the Business Continuity management Standard, BS25999) that companies already work to or are compliant with. Cable&Wireless do not object to risk assessments based upon existing government processes providing it is recognised that this cannot be allowed to compromise existing processes that are currently in place to meet company business strategies and objectives, as well as customer expectations. Any additional risk assessment and reporting requirements that are not aligned to already existing company business objectives may impose onerous resource requirements and therefore government funding should be available for any additional activities to be carried out.

4) Do you agree there should be a duty on relevant companies to provide information to Ofcom on their emergency plans?

Cable&Wireless emergency plans and supporting processes are already reported at a high level to Civil Contingencies Secretariat, and are externally audited as part of our BS25999 certification. We would be happy to provide information to Ofcom (or other responsible government agency). It should be noted however that the concerns raised above concerning expertise and capability within the recipient organisation, and additional costs to support the requirement where there is not an alignment with existing business requirements, are equally valid in this case. In addition there is a question of security; CPNI and Department of trade and Industry (now BIS) had always resisted allowing emergency plans to be made public as this would give malicious third parties the ability to disrupt recovery in an emergency situation. Under no circumstances would Cable&Wireless support companies emergency planning arrangements being made public.

5) Do you agree that there should be a duty on such companies to a) test emergency plans and b) participate in Government exercises as and when necessary to ensure overall resilience?

a) Yes. Testing should be carried out and an indication of the level and frequency of testing and exercising carried out should be reported. Plans are only as good as the paper they are printed on (if that saying is still appropriate in this cyber-age). As noted in 1) above, consistency in the definition and methodology of testing would be required in order to make any comparison between organisations or to government expectations, and these should be mutually agreed between the empowered government agency and industry.

b) Cable&Wireless recognise that there is a need for communications service providers to participate in Government exercises and currently do so through membership of, and active participation in, the Electronic Communications Resilience and Response group (EC-RRG) and its annual emergency planning (EMPEX) exercises. In addition participation in local or regional government exercises is undertaken as a consequence of our Category Two Responder status under the Civil Contingencies Act.

Cable&Wireless recognise that there are members of the electronic communications industry that are not active participants in EC-RRG and/or EMPEX. It should be noted, however, that EC-RRG is in accordance with its terms of reference a voluntary organisation made up of representatives from the Regulator, central and regional government agencies and industry. It is difficult to see how a duty can be imposed to participate in a voluntary organisation. The implication therefore is that EC-RRG will either become a formal body in which (active) participation is mandatory, or else EC-RRG will cease to conduct an annual exercise of the National Emergency Plan for Telecommunications. Cable&Wireless would strongly object to either of these options. EC-RRG and the annual EMPEX exercises have been invaluable in developing emergency planning and industry-government interfaces since its inception in 2002, as recognised in the Digital Britain White Paper published earlier this year.

6) Are there any other issues concerning the resilience of networks that you believe should be addressed in legislation?

It is not clear as to the purpose of the above powers being granted, whether it is just to provide visibility of vulnerabilities. The logical implication is that risk assessment will allow vulnerabilities to be both recognised **and** mitigated, however it is not clear whether this will be done at a company or governmental level. To clarify, if Ofcom determine that a company has a particular vulnerability will there be powers granted, possibly at a later date, to impose corrective actions? And if actions are mandated that are not part of a company's business model (if Ofcom and the company disagree on the acceptance of a particular risk, say) how will any costs that are incurred be resolved? The legislative position on this needs to be clarified.

Do you think that the proposals in this consultation document are in line with the expected outcome of the Framework Review?

Cable&Wireless agree that the framework review requires a governmental oversight of resilience, risks and mitigating actions including testing of emergency plans, that the issues raised in this consultation require resolution and that the proposals would help with resolving those issues.

Are there any other points you wish to make in relation to the issues covered in this consultation?

In summary, it is not clear how providing additional powers to Ofcom will change existing requirements for reporting and co-operation with CPNI, CCS and EC-RRG. These are substantial issues to be addressed. In addition the issues of expertise/capability in Ofcom and the allocation of costs have been highlighted. Finally Cable&Wireless believe that definition's methodologies and processes ensuring consistency MUST be determined in co-operation with industry.

3. FURTHER ENQUIRIES

All enquiries regarding this response should be addressed to:

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