



Response by AT&T, Colt and Verizon Business to ANACOM consultation on reporting incidents

Introduction

This response is submitted on behalf of the following companies: **AT&T, Colt and Verizon Business**. All our companies are engaged in the provision of pan-European and global services to large enterprise customers, and have legal entities in several EU Member States.

Our companies are business provider of pan European cross-border high-grade communication, IT and security solutions to high end business customers. We do not provide retail services to consumers. As a cross-border business provider, we have a very different perspective on the concept of security breach notifications than would be expected from providers of mass-market consumer services.

In summary, we believe there should be greater clarity regarding the applicability of the requirements to pan-European business providers under the revised Article 13a of the revised Framework Directive. This is because the obligations will have far less relevance to business providers given the nature of their customers, and in any case it is not clear how we will be able to comply with the notification requirements.

Further, notwithstanding the applicability of the requirements to business providers, we would stress the need for harmonisation of implementation across Member States. Any inconsistency in how EU requirements are applied in this or any other area creates real problems for cross-border providers, increasing costs and complexity unnecessarily.

Thresholds

The Technical Guideline on Reporting Incidents issued by ENISA on 10 December 2011 defines the following parameters in order to determine if an incident is significant:

- Number of users affected
- Duration of incident
- Geographic spread/region
- Impact on emergency calls

ANACOM takes into consideration all of them. We would like to raise ANACOM's awareness about the impact of the geographic spread/impact of the incidents.



ANACOM proposes to impose reporting obligations to all operators whose coverage is above certain square kilometres (starting with 200km²) independently of the number of users affected by the incident or even of the total number of customers served by the operator.

Pan-European business operators have a very limited number of customers in Portugal (always far below the minimum threshold of 5,000 users). Customers tend to concentrate in the main business locations, but secondary locations can be located in any point of the country. All locations in the country are usually served from a reduced number of switching/routing facilities (even just one) due to the small number of customers. Incidents in such facilities will tend to have a very wide geographical impact, probably the whole country. As a consequence, even if incidents will have a very reduced impact in terms of number of users, they will have to go through the reporting process as the territory affected will often be very wide.

We consider that a reporting threshold with such a broad scope is not proportionate and does not achieve its intention, which is presumably in essence to filter incidents based on their seriousness. With a threshold interpreted in this way, ANACOM seriously risks creating notification fatigue, by compelling operators with national coverage to report trivial incidents affecting a very small number of users simply because their coverage is national.

We consider that the geographic spread/region should be taken into account not by the absolute size of the territory measured in terms of square kilometres which is an arbitrary measure, but rather by a more qualitative threshold with reference to especially vulnerable territories such as islands or other particularly isolated geographic areas where there may be less access to alternative communications services in the event of an outage. Actually, this approach is already considered in the draft proposed by ANACOM. ANACOM takes into consideration the special effect and incident could have in the islands of Madeira and Açores.

We further note that OFCOM¹ does not consider that geographic spread/regional is a valid parameter in order to define thresholds.

We would therefore propose to remove the size of the geographic area affected as a threshold, as geography is already defined as a threshold when taking into account the special characteristics of islands. As noted above, we consider that without doing this, there will be a disproportionate burden placed on providers with national coverage to report minor incidents. This would in turn reduce the effectiveness of the regime and dilute the perceived importance of a notification.

Consistent implementation across Member States is crucial for cross-border business providers;

It is of crucial importance for pan-European business providers that this new requirement in all its elements (definition of scope, process, notification forms, means

¹ <http://stakeholders.ofcom.org.uk/telecoms/policy/security-resilience/>



of notification, etc) is fully identical in all EU Member States. This is in the interest of all stakeholders as it will improve efficiency and minimize costs for everyone. It will minimise costs and the extent to which pan-European business Service providers need to adopt a different approach in each country and ensure providers in one country do not incur a greater regulatory burden than in others.

We therefore invite ANACOM to review the reporting procedure in order to align it with the Technical Guideline on Reporting Incidents published by ENISA on 10 December 2011. We understand reporting by operators to NRAs is outside the scope of this document. However, ANACOM's proposals significantly diverge from ENISA's framework in terms of format, content and deadlines.

The situation that all stakeholders (not just industry) should be anxious to avoid is one where Member States each come up with their own inconsistent guidelines which differ or go beyond those which might ultimately be issued by the Commission. There are clear benefits from having a coordinated approach across the EU which should be achievable even without formal harmonising measures.

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