

Trialling Consumer Remedies

BT Group's response to Ofcom's consultation

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Non-confidential version

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1. An evidence-based approach

We welcome an evidence-based approach to remedies – trials will play an important role in this.

- 1.1. We welcome and support Ofcom's proposal to take an evidence-based approach to testing the effectiveness of consumer engagement remedies prior to their implementation. At BT, EE and Plusnet (referred to as BT throughout this response) we are committed to improving engagement with, and outcomes for our customers.
- 1.2. We agree that trials have an important and valuable role to play in establishing an evidence-based approach. Trials – including randomised control trials (RCTs) – will enable Ofcom and Communications Providers (CPs) to observe actual customer behaviours. With these revealed preferences Ofcom and industry will be able to identify the most effective and efficient action for maximising customer engagement.
- 1.3. An evidence-based approach is much more likely to be effective and insightful if it is collaborative, industry-led and involve a variety of CPs. This way, Ofcom could capitalise on the communications expertise and customer knowledge that providers possess in relation to the demographics of their specific customer bases. We agree that using carefully-constructed trials, with a "do nothing" control group and a fully-representative set of triallists, will yield positive results (and subsequently positive outcomes for customers). However, we strongly believe that this is contingent on trials being co-designed by Ofcom and industry, where industry can work voluntarily with Ofcom to develop effective trials. Furthermore, the implementation of a new General Condition is unlikely to be proportionate in light of the fact that a voluntary approach has historically delivered good outcomes in similar circumstances.
- 1.4. In this response we set out why we believe that a collaborative and voluntary approach is the most effective and proportionate method at this stage. We also set out the need for Ofcom to provide industry with more detail of prospective timelines and the need for a distinct approach to trialling remedies for business customers.

2. Voluntary trials

We think that trialling consumer remedies on a voluntary basis will be more effective.

- 2.1. Ofcom is proposing that it is necessary to give itself formal powers to direct providers to take part in trials. Its rationale for this is that:
 1. Trials are unlikely to be in the provider's commercial interest as taking part might lead to loss of revenue;
 2. Trials are more likely to be effective if Ofcom retains control of the design and process of the trial.
- 2.2. While we share Ofcom's desire for effective and efficient consumer engagement trials, we do not agree that using formal powers to direct CPs to participate is a necessary or proportionate way to achieve this.
- 2.3. Under its statutory duties, Ofcom has set out its regulatory principles which guide how it regulates; a coherent and predictable approach to regulation¹. Here, Ofcom confirms that it will seek the 'least intrusive regulatory mechanisms to achieve our policy objectives'. Where Ofcom does seek to intervene it must be "evidence-based, proportionate, consistent, accountable and transparent"².
- 2.4. Opting immediately for formal regulation in the form of a new General Condition, without first exploring the merits of a voluntary approach, is not consistent with these regulatory principles. Moreover, it is unlikely to be proportionate in light of the fact that a voluntary approach has historically delivered good outcomes in similar circumstances.
- 2.5. Ofcom states that as the commercial interests of providers will likely be at odds with the objectives of the trial (i.e. increased engagement and switching), formal powers to direct are necessary³. We disagree with this, because it **is** in fact likely to be in CPs' commercial interests to ensure that any proposed remedies are properly trialled in advance of implementation. Disproportionate remedies are not in any company's interests and any ineffective remedy is a disproportionate one.
- 2.6. In any case, there is a plethora of evidence to suggest that adopting a voluntary approach has, and can continue to, deliver good outcomes for consumers despite having commercially negative impacts on providers. Recent examples include the industry Automatic Compensation scheme, the Broadband Speeds Code of Practice and the voluntary commitments put forward in response to Ofcom's current reviews of broadband pricing and mobile handsets. All of these voluntary initiatives have had

¹ Ofcom's 2005/06 Annual Plan, Ofcom, March 2005 , Figure 2.2

² Making communications markets work well for customers - A framework for assessing fairness in broadband, mobile, home phone and pay-TV, para 3.24

³ Trialling Consumer Remedies – para 4.3

a substantially negative commercial impact on CPs (in some cases significantly greater than will be the case from participating in trials).

- 2.7. Despite this, CPs have readily put forward voluntary proposals that help Ofcom to achieve its objectives, and secure better and fairer outcomes for customers. CPs have recognised that it is in their overall, longer-term commercial interests to do so. As Ofcom also notes, it has worked effectively with BT on a voluntary basis for the standalone voice trials (as part of Ofcom's Retail Voice-Only Market Review)⁴. We believe that the precedent set by these voluntary interventions demonstrates that a voluntary approach would also be sufficient, proportionate and effective for the trialling of consumer remedies at this stage.
- 2.8. Ofcom's second justification for awarding itself formal powers is that it will obtain more effective outcomes when it retains control of the design and process of the trial⁵. In our experience this is unlikely to be the case. As Ofcom itself acknowledges, it has limited experience in designing and conducting trials⁶. Conversely, CPs regularly conduct trials with their customers to test new commercial and engagement initiatives. CPs have both marketing communications expertise and a detailed knowledge of their customers' demographics, preferences and concerns.
- 2.9. Furthermore, we understand that Ofcom has adopted this justification from the Financial Conduct Authority's (FCA) learnings from consumer remedies trials in the financial markets⁷. However, while the FCA asserts that it is important for the regulator to keep control of the trial process, it continues to operate field trials on a voluntary basis⁸.
- 2.10. The priority for Ofcom, industry and customers is that trials are both effective and efficient. This will most likely be achieved where Ofcom and industry are co-designing trials, drawing on the expertise of industry to help Ofcom find the most effective way to achieve its regulatory objectives.
- 2.11. Importantly, the co-designing and collaboration between industry and Ofcom should occur from the start of the trial process. While we welcome Ofcom's recognition of the need for industry to be consulted⁹, doing so only after the trial has been designed is too late and will lead to inefficiency for both industry and Ofcom¹⁰.

⁴ BT has also been proactively calling for voluntary trials where Ofcom and industry are unable to agree on the right approach to customer engagement remedies – BT's response to Ofcom's consultation document - Helping consumers get better deals - Consultation on end-of-contract and annual best tariff notifications, para 41.

⁵ Trialling Consumer Remedies – para 4.4

⁶ Trialling Consumer Remedies – para 3.10

⁷ Financial Conduct Authority - Helping people get a better deal: Learning lessons about consumer facing remedies, page 44

⁸ Financial Conduct Authority - When and how we use field trials, para 4.22

⁹ Trialling Consumer Remedies – para 4.3, 4.28

¹⁰ A significant amount of time is likely to be required to design an effective trial. In the event that this does not align with CPs experience with its customers Ofcom will either need to redesign the trial, or implement a trial that could be ineffective.

2.12. Industry is both willing and ready to trial remedies on a voluntary basis. In response to Ofcom's proposals in this consultation we are working proactively with industry to draw up a set of principles upon which voluntary commitments or a code of practice can be based. A proposed draft Code of Practice will be submitted to Ofcom shortly, and we will be happy to discuss this further with Ofcom to make sure that it is fit for purpose and meets the needs of both Ofcom and industry. Below we set out some principles which we will be using as the basis for a voluntary industry approach:

Principles for testing consumer engagement remedies:

1. **Transparent** – When proposing a trial, Ofcom should organise industry workshops to clearly set out the hypothesis being tested, discuss the scope and design of the trial (including a 'do nothing' control group) and set out the problem that the proposed remedy is addressing.
2. **Proportionate** – Ofcom should recognise that trials impose costs on companies (and ultimately on customers) and carry out an assessment of the proportionality of the trial itself to the issue being addressed.
3. **Voluntary** – Ofcom must take a 'voluntary first' approach, with regulatory compulsion only as a last resort if voluntary commitments fail.
4. **Collaborative** – Ofcom should seek to co-design trials with industry rather than instructing industry on the design of the trial.
5. **Co-operative** – Similarly CPs that have signed up to the voluntary commitments must agree to co-operate with Ofcom so as to achieve an agreed set of shared objectives.
6. **Pragmatic** – Ofcom should take account of CPs' systems development timescales, and potential clashes with other activities that will benefit customers, such as new product launches, when setting timescales for trials.

2.13. A voluntary approach would also be of benefit to Ofcom. That's because CPs will be more likely to work collaboratively with Ofcom if the trial was being developed in accordance with an agreed Code of Practice or set of voluntary commitments. With no need to run *formal* consultations in advance, Ofcom would also be able to set up trials, and thus ultimately introduce new remedies, more quickly, subject to adequate notice being given to CPs.

If Ofcom continues to proceed with a new General Condition obligation, then the condition itself will need re-drafting

2.14. Whilst Ofcom does outline many of the above principles in its consultation, its proposed General Condition C9 does not fully reflect the intent expressed in the consultation document. If, despite a voluntary industry proposal, Ofcom does decide to impose a formal regulatory obligation, the wording of the General Condition would need to be amended to bring consistency between it and Ofcom's stated intentions.

- 2.15. Below we have proposed some amendments to Ofcom's proposed General Condition C9.2 and C9.3 that recognise Ofcom's stated intentions in its consultation document.
- 2.16. In addition to these amendments we also propose that Ofcom include a new condition that would introduce a sunset clause or formal review of C9. This condition would require Ofcom to review the effectiveness, necessity and proportionality of General Condition C9, should it be minded to maintain it.
- 2.17. Finally, it is not clear to us why Ofcom requires the additional information gathering powers set out in Condition C9.7. Ofcom already has established and extensive information gathering powers¹¹. Where Ofcom is seeking to obtain information from CPs for the purposes of designing and conducting trials, we think that it should be able to rely on these existing powers.

General Condition C9:

C9.2 In the absence of the necessary voluntary participation (i.e. the number of Regulated Providers required to constitute an effective trial) from Regulated Providers then such Regulated Providers must comply with any direction which falls within Condition C9.3 made by Ofcom for any purposes connected with its consideration of any Customer Engagement Measure

C9.3 A direction falls within this Condition if:

(a) it is made as part of the assessment by Ofcom of the need for, design or effectiveness of, measures aimed at protecting the interests of End-Users; and

(b) it requires a Regulated Provider to trial, test or evaluate a Customer Engagement Measure in the manner and time specified by Ofcom or a third-party agent appointed by it; **and**

(c) Ofcom has consulted with Regulated Providers on the best way to run such a trial, test or evaluation.

...

C9.8 Once a direction has been issued under Condition C9 Ofcom must provide at least sufficient notice (which is to be agreed with Regulated Providers on a case-by-case basis) of the commencement of the trial, to allow adequate preparation, taking account of the Regulated Providers' existing systems developments and proposition launch plans, the number of concurrent regulatory initiatives or requirements at the time and the need for any other relevant systems or operational changes pertinent to the trial.

C9.9 Ofcom is required to regularly review, in consultation with Regulated Providers, the effectiveness, necessity and proportionality of this General Condition C9.

¹¹ Communications Act 2003, Part 2, Chapter 1 – Section 135, 136 and 191.

3. Detailed and timely information

CPs will require detailed and timely information on each trial to be most effective.

- 3.1. The design, operation and timeliness of information for trials will have an impact on their effectiveness and efficiency. We therefore welcome Ofcom's proposal to consult on the design and operational specifics of each trial prior to the trials taking place¹².
- 3.2. Ofcom's proposed selection and consultation criteria are a good starting point. However, Ofcom should set out its approach to determining the trial's design in more detail. Specifically, we think that Ofcom should also clearly set out:
 - the hypothesis that is being tested;
 - a description of the trial design Ofcom proposes to adopt and why (including the need for a "do nothing" control group);
 - a description of how success will be defined and measured;
 - the target start date of the first trial, and the anticipated length of these trials;
 - specific requirements for participating CPs; and
 - clarity on how customers' data is to be handled appropriately.
- 3.3. This additional information will provide CPs with an opportunity to be more helpful in the co-design of effective and efficient trials.
- 3.4. While we agree with Ofcom's decision to consult on the design of the trial before implementation, we are concerned that there will be insufficient time for providers to prepare for each trial.
- 3.5. CPs have strategic and system development roadmaps (often planned 12-18 months in advance) and resource constraints that may make participation in a trial difficult, particularly at short notice. We already have significantly contested roadmaps for our BT, EE and Plusnet brands¹³. Although we support the use of trials to improve customer engagement, there will inevitably be trade-offs should Ofcom seek to trial remedies concurrently with other industry or regulatory initiatives.
- 3.6. Ofcom should recognise these trade-offs, providing CPs with adequate time to prepare for participation and taking account of a provider's existing commitments.

¹² Trialling Consumer Remedies – para 4.28

¹³ We are currently preparing for the implementation of the End-of-Contract Notifications and Annual Best Tariff obligation, preparing for the new EECC Cross-platform Switching requirement and implementing various vulnerable customer and customer fairness voluntary commitments made proactively as part of Ofcom's review of broadband pricing and mobile handsets.

- 3.7. In the event that Ofcom feels it can justify the imposition of a regulatory obligation rather than a voluntary approach, it must include in its General Condition C9 a provision that outlines a minimum notice required for a trial to start once a Direction has been issued. This provision should give providers sufficient time to co-design and implement the trial, taking account of a provider's work priorities, the number of other concurrent industry initiatives and the need to make any necessary systems changes.
- 3.8. We have proposed an additional condition that will make this provision explicit in Ofcom's General Condition C9 (see above).
- 3.9. Finally, we would welcome the publication of some worked examples from Ofcom to give industry an indication as to how it might approach trialling consumer remedies, the nature of those remedies, the selection of participants, the timelines it might adopt and the number of trials potentially to be conducted each year.

4. Business customers

At this stage, it is proportionate for Ofcom to exclude business customers from scope of the proposed intervention

- 4.1. We are committed to improving engagement for our customers in the business segment.
- 4.2. While we do not oppose the use of trials to test remedies for small business customers in principle, we think that such intervention must be tailored to the characteristics of business customer markets. There must be sufficient evidence of the existence of any adverse effect on competition or lack of business customer engagement that warrants the inclusion of the relevant business customer segments in trials to test customer remedies.
- 4.3. As we have set out in response to Ofcom's Fairness for Customers framework discussion paper¹⁴, business customers can differ significantly from residential customers. There are also considerable differences between business customers themselves, for example in terms of their product preferences and procurement strategy.
- 4.4. At this stage we do not think that Ofcom has sufficiently demonstrated the need for such trials in the business customer segment¹⁵. Moreover, we believe that Ofcom's proposal to include business customers in General Condition C9 is a disproportionate intervention at this stage.
- 4.5. We note that the Competition and Markets Authority (CMA) and Ofgem opted not to include business customers in their initial programme for trialling remedies, instead seeking to "launch trials for microbusinesses after we are in a position to transfer learning from the domestic programme"¹⁶:

*"Contrary to our approach on the Domestic Ofgem-led Programme, we will not recommend that Ofgem introduce a licence condition to mandate suppliers to participate in the Ofgem-led programme concerning the microbusiness segments for a number of reasons including:
(a) RCTs [randomised control trials] are less well established as a testing tool among microbusinesses, as compared with domestic customers; and
(b) We have less evidence that ineffective microbusiness information is as big an issue as it is in the domestic retail markets."*

¹⁴ BT's Response to discussion paper published on 17 June 2019

¹⁵ "It is reasonable to expect that business customers are generally better equipped with the skills and resources to manage their telecoms contracts than residential customers, as well as more likely to have knowledge about the information provided under their contracts". – Ofcom (2019), Statement on end-of-contract notifications and annual best tariff information, para 3.24.

¹⁶ Competition and Markets Authority - Energy market investigation Final Report – page 1189, para 17.198

- 4.6. We support the CMA's and Ofgem's assessment, and believe that Ofcom should adopt a similar approach. Should Ofcom wish to trial remedies in the business customer segments (having provided sufficient evidence of the need for such remedies), it should do so on a voluntary basis (for similar reasons to those discussed for residential trials), working with CPs that serve business customers to identify the correct parameters that will deliver statistically significant results.

5. Cross-sectoral insights

- 5.1. Ofcom notes in its consultation that it has limited experience of designing and conducting trials and has thus looked to other regulators for insight.
- 5.2. We welcome Ofcom's decision to use cross-sectoral insights from industries that have considerably more experience in trialling behavioural consumer remedies. Much can be learned from other sectors, not only in generating useful conceptual and analytical frameworks for trialling remedies, but also in understanding what regulatory interventions have worked well and not so well.
- 5.3. There is a need for regulators to learn from each other when developing best practice for designing trials. Ofcom has the opportunity to learn from regulators like Ofgem and the FCA as it develops and refines its approach to trialling remedies in the communications markets. This is particularly the case where other regulators have adopted voluntary approaches in circumstances similar to those currently found in communications markets¹⁷.
- 5.4. However, while significant cross-sectoral learnings can be taken from trials in other industries¹⁸, Ofcom must recognise the distinctiveness and complexity of communications markets. For example, the effectiveness of the collective switching trials in the energy industry does not necessarily prove that a similar remedy would be effective in the communications markets, or that trials should be run in the same way.
- 5.5. While price is a key differentiator in the retail energy market, which is in a commodity market, customers' purchasing decisions in the communications markets will be based on factors beyond primarily price, including product speed, router quality, inclusive features and bundled products (additional TV, mobile and call packages). Should Ofcom consider designing a collective switching trial, similar to those conducted by Ofgem, it must take account of these key differences. Conducting a collective switching trial on the same basis as those in energy will likely lead to consumers being worse off; for example they may lose elements of bundled products that they value if encouraged to switch based on price alone.
- 5.6. Remedies should therefore be trialled in a communications context, and trials designed with the specific characteristics of the communications markets in mind.
- 5.7. These important differences between industries further highlights the need for Ofcom to work closely with CPs when co-designing and implementing trials.

¹⁷ Financial Conduct Authority - When and how we use field trials, para 4.22

¹⁸ As demonstrated in Ofcom's 3rd case studies – Trialling Consumer Remedies – page 14 - 16

6. Annex

Ofcom's consultation questions:

Question 1: Do you agree with the proposal to make a general condition to protect end-users' interests requiring all providers to participate in trials of customer engagement remedies, as directed by Ofcom?

Whilst we agree with the proposal to use trials to inform the implementation of consumer remedies, we do not agree that the implementation of a General Condition is proportionate at this stage. Instead, Ofcom should adopt a 'voluntary first' approach that recognises the importance of CP's experience in co-designing and implementing trials. Only where Ofcom is unable to obtain the necessary participation from CPs should it then explore the use of formal powers. However, at this stage it has not evidenced that formal powers are necessary.

We do not agree with the scope of the proposal to include business customers. As set out in this response, at this stage we think that it is proportionate for Ofcom to exclude business customers.

Question 2: Do you agree with our proposed approach for determining whether it is appropriate to conduct a trial in future cases?

We agree that Ofcom's proposed criteria is a good starting point for residential customers. However, Ofcom must ensure that CPs are given detailed and timely information in the build up to any trials. If Ofcom is unable to do this then trials are less likely to be effective as CPs will not be able to participate or make the required system changes at short notice.

Question 3: Do you agree with the proposed criteria for selecting which provider(s) we would direct to take part in a trial?

We agree that Ofcom's proposed criteria is a good starting point. However, it is important for Ofcom to recognise that different CPs will have varying customer demographics. As a result, when one CP is chosen to take part in a trial the results from its customers should not be taken as indicative of the industry as a whole. Where Ofcom does choose a certain CP for a trial it should set out why it has chosen that CP and why its customer base is appropriate for the remedy being tested.

Question 4: Do you have any comments on our assessment and provisional conclusions set out in Section 5?

No.

Question 5: Do you have any comments on the draft condition set out in Annex 5 to this document?

There is a disconnect between Ofcom's proposals set out in its consultation document and the wording in Ofcom's proposed General Condition C9. At this stage the condition does not fully reflect the intent expressed in the consultation (in particular the assurances given on trials not being a disproportionate burden on a small number of CPs, and the voluntary first approach to expressions of interest). We propose that the condition needs to be amended to bring consistency between the two.

Question 6: Do you have any other comments on our proposals?

No.