

Hyperoptic Consultation Response

Fair treatment and easier switching for broadband and mobile customers – Proposals to implement the new European Electronic Communications Code



We are Hyperoptic. And we go beyond the expected.



Introduction

Hyperoptic welcomes the opportunity to respond to the Ofcom consultation on the transposition of the European Electronic Communications Code (EECC).

The consultation is wide ranging and covers many areas, the majority of which are aimed at delivering improvement to the customer experience when engaging with communications services. Within this response, we set out some detailed points / concerns. Many of these relate to the specifics of individual implementation and the potential unintended consequences of the approach taken, rather than the principle behind the requirement. The remaining area of concern is about the amount of time that Ofcom will be giving Industry to implement the required changes, once a Statement has been published. This is significantly reduced compared to the timeframe given at the last update of the General Conditions (GCs), and the changes required to meet the revised GCs on this occasion are of a significantly greater level of complexity.

Better contract information and stronger rights to exit

Better information for customers in advance of signing is a benefit. Fully informed customers who understand what they are purchasing in advance are less likely to change their mind within their cooling off period. However there is a triangulation between the three regulatory areas of the revised GCs, compensation requirements and Physical Infrastructure Access (PIA) that could drive bad consumer outcomes in an unanticipated way.

One of the requirements under Annex 1 to Condition C1 is 4b - the arrangements for the provision of the Relevant Electronic Communications Service(s), including the date of provision of the service. Failure to meet said date will attract compensation to counter the harm of delayed provision. However, for providers utilising PIA, there is imperfect information regarding capacity. This could result in bad actors obfuscating when providing this information to customers and thereby circumventing Ofcom's intentions. We believe that it is important that Ofcom recognise this dependency within the process and adapt the requirements under 4b, to allow providers to set out the available information to the customer at the time that they have it. This would allow customers to be fully informed as to how the provision will take place, rather than potentially setting false expectations, and it therefore in the consumers best interest.

We support the principle of strengthening customers' right to exit after mid-contract changes. However, we are concerned that there is some ambiguity as to the scope of the intended changes. Although some paragraphs (including 1.11) refer to these as changes in price, the drafting of the consultation and updated GCs do not sufficiently clarify that this is the full scope of the measures.

As drafted, these changes would give customers the right to exit any contract without penalty following any slight change to a contract or package. The scope for small, and relatively inconsequential changes for the consumer are broad. Analysis by our legal team suggests that of 24 changes that we have made to our terms over the last 16 months, 17 or so of them would be caught by this requirement – despite the fact that none of them were detrimental to customers. Therefore, in their current form these changes



impact on revenue because of higher churn and increase costs due to the increased notice provisions. This impact is ultimately paid for by consumers, but in this case, there is no potential harm that is being addressed. An alternative would be to have updated versions of customer terms only apply to new customers, but it becomes increasingly more difficult where you have multiple “old” versions still in use. This in turn increases risk of unintentional non-compliance.

A related risk is that this could lead to reduction in innovation e.g. offering resilience options to customers or an upgraded package for an additional cost, because it might be preferential to freeze packages throughout the contract period rather than risk triggering this condition or adding to the administrative burden on providers and consumers.

Hyperoptic would recommend that Ofcom implement this requirement in a pragmatic way – allowing customers to be protected from price increases whilst still being able to benefit from innovation driven by the competitive environment.

New rules to make broadband switching easier and more reliable

We are very supportive of proposed new rules to make switching easier and more reliable for customers. We believe that a frictionless approach to facilitate consumer switching beyond the Openreach (OR) footprint will be one of the key drivers to delivering the government’s vision in respect of digital infrastructure. It would be futile to invest in future-proof high-speed capable networks, if the process of switching to them deterred customers from switching and receiving the benefits driven by infrastructure competition. We therefore believe that it is essential that Ofcom chose a process that is truly gaining provider led, without requiring customers to interact with their current provider.

We are however extremely concerned with the short timescale that remains for implementation in time. Ofcom do not address the required new switching process in this consultation, rather it calls out the ongoing efforts of the Office of the Telecoms Adjudicator (OTA) and industry on the issue. Hyperoptic have been and remain active participants in this process and will continue to do so.

Current deliberations have, at the instruction of Ofcom focused exclusively on the strategic future switching system with no consideration permitted towards a day one solution. With this collaborative process still ongoing, and as yet no day one solution discussed, We are highly concerned that by time attention can be turned to a day one solution it will be too late to deliver even a partial solution that delivers even basic compliance. We do not believe that this risk has been appropriately addressed and acknowledged by Ofcom. Whilst providers who provide service over the OR echo system can point to the fact that a large percentage of switches would be compliant, this is not the case for those that provide service over their own infrastructure. The risk of non-compliance is therefore materially higher for those providers who are an essential element in meeting the government’s coverage targets for fibre.

[Implementation of whatever solution is chosen will take a number of months to fully scope, build and implement, and none of this work can begin until Ofcom have consulted on, and published a Statement



setting out their chosen switching process. We urge Ofcom to publish a tight timeline for this work, thus providing operators with the earliest possible sight of required developments.]

Whilst we recognise that consumers should be compensated where a switch does not take place, we would urge that this element of automatic compensation be delayed until a fully automated switching process has been implemented. Compensation obligations should also reflect where any harm associated with a switch has come from, e.g. , the gaining provider should not be held liable if a losing provider does not cease billing after being told that the switch has completed.

Emergency video relay

We recognise that an emergency video relay service would allow BSL users to communicate in their first language when making critical contact with the emergency services and allow the BSL user to receive potentially life-saving instructions as well as being of great benefit to the emergency services.

Providing access to such services is something that is possible as long as implementation is carried out in such a way as to permit access to emergency services in the event a customer's service is suspended for non-payment. However, it is not entirely clear from the consultation the exact nature that Ofcom expect providers to take in respect of establishing a relationship between consumers and the video relay service itself. It is also not clear whether Ofcom expect an industry wide approach to this, or if each provider is meant to implement its own solution. If the latter, could become confusing to customer who have switched between providers.

We also urge Ofcom to implement this requirement, as well as those more broadly that deal with vulnerability in a technologically neutral and future proofed way. Future advances may create solutions that are more appropriate. It is that overall drafting of protections for vulnerable customers are designed in such a way that would permit new or equivalent solutions to be deployed without requiring consultation to amend the GCs.

New rules to help customers with disabilities have equivalent access to communications services

We are in agreement with the proposal to extend the current requirement to cover any communication (except marketing) that relates to a customer's communication service. We believe that the proposed extension of the GC to any customer who cannot access communications due to their disability should be accompanied by some guidance from Ofcom as to the scope of disabilities considered. This would ensure that customers expectations are met when switching between providers, as the application of this requirement would be able to be applied more consistently then is currently the case in respect of vulnerable customers.



Definitions

As a provider to businesses as well as consumers it is essential that we are able to have certainty of the types of regulatory requirements that impact each customer type within our business. This is the case for ensuring compliance on an ongoing bases, but also equally true when scoping and implementing future developments.

There are considerable operational issues in applying regulation against categories of customer based on employee numbers, which are often difficult to discern, unstable and with no simple mechanism for keeping current. By layering the 0-9, 10-49 employee categories on top of the existing 10 employee threshold in UK law, Ofcom will only increase this confusion and unnecessary burden.

We support the ISPA request for a clearer, more targeted and proportionate definition of business customers based on contract type. We urge Ofcom to move to such a model which would be straightforward to implement for providers and, crucially, would be easy to understand for customers. A contract-type would clearly signal to customers what protections they have and allow them to make more informed choices.

Bundles

The new definition of a bundle increases the scope to encompass any services bundled with a communications service and gives Ofcom the “express powers to regulate non-communications elements”. We are concerned about the potential for regulatory clash given Ofcom will have power over services that are subject to different regulatory regimes.

Despite the Government assessment that the risk of such clash would be “limited”, Ofcom have already recognised (at para 6.53) that “*We are concerned that imposing such a requirement could conflict with existing requirements in other regulated sectors....*”. Even if the risk for regulatory clash is deemed low at present, there is clear risk that such clashes will happen in the foreseeable future. This being the case we would welcome guidance from Ofcom as to how any disputes between conflicting regulatory regimes would be resolved.

Provision of data to third parties

We believe that in order to meet this requirement in the most efficient way, there should be a defined subset of data that can be requested and in a prescribed format. This will remove the duplication of effort and costs from having to tweak processes in order to provide data for each subsequent request.

Implementation timeframe

The timeframe available for providers to implement the changes that have been proposed by Ofcom is too short for the nature of the required changes. This is particularly the case given the complexity of some of the changes, e.g. switching. It is also of concern that a number of the detailed developments required cannot be fully scoped until after have published their final Statement – given that the consultation closes



with less than nine months until the implementation deadline, it is likely that the final Statement will not be published for a minimum of a month, which would leave eight months, part of which includes peak holiday time in the summer and also encroaching into year-end system freezes. By comparison, Ofcom allowed industry a year to implement the previous revisions to the GCs, and these did not have the same level of complexity, and in some cases, uncertainty. Required changes are also likely to require use of the same resources, resulting in the fact that many changes will have to be done sequentially, rather than in parallel, thereby increasing the end-to-end development cycle.

Due to this squeezed timeframe, and as the deadline falls just days before the end of the UK's transition period with the EU, we would urge Ofcom to consider extending the implementation period, or alternatively take a reasonable approach in its expectations around implementation timings by not commencing monitoring and enforcement programmes until a reasonable implementation time has passed.

We request that Ofcom publish an updated version of the guidelines to the GCs well in advance of the transposition deadline to allow providers to best prepare for the changes. This will help us and the wider industry to comply and thereby meet the objectives of the EECC whilst at the same time reducing regulatory risk.

Conclusion

As set up above, we are very concerned by the short timescale that remains for implementation of some of the more complex requirements. This is particularly case for cross-platform switching requirements, as Industry have not begun discussions about a potential Day 1 solution. We also believe that some of the specifics of implementation may result in unintended consequences because of the specific wording that has been lifted from the EECC. The principles of these objectives can be met without the unintended consequences if the wording was amended. Given the government's statements about exiting Europe in December, we urge Ofcom to take a pragmatic approach to implementation both in terms of timescales for compliance, as well as the details of implementation. This would ensure that the GCs are not technologically binding e.g. in meeting the requirements of deaf customers, we would not want to preclude improved solutions where they become available and are equivalent.