

# BT response to Ofcom's consultation:

*Implementing the new European Electronic Communications Code*

*Revised proposals for annual best tariff information and business customer definitions*

Comments should be addressed to:  
BT Group Regulatory Affairs,  
BT Centre,  
London,  
EC1A 7AJ  
[Regulatory.affairs@bt.com](mailto:Regulatory.affairs@bt.com)



## Summary

We welcome Ofcom's revised proposals for annual best tariff notifications and are pleased with the flexibility that Ofcom has demonstrated in amending the definitions of micro, small and not for profit enterprises. We would also like to acknowledge the engagement Ofcom has had with the industry since the previous consultation on "Fair treatment and easier switching for broadband and mobile customers" and welcome the extension in implementation timeframes agreed with DCMS. However, we remain concerned with two key aspects of the EECC requirements.

### **Inclusion of larger business customers**

We remain concerned with the continued inclusion of large business customers within the EECC requirements. As Ofcom states at paragraph 4.30, the purpose of the EECC is to "*extend protections to business customers with a similar bargaining position to residential customers*". It cannot be the intention of legislators to, for example, extend termination rights for all business types; particularly those with specialist procurement teams, negotiating bespoke contracts with change control and remedy clauses to cater for a scenario where there is change to the terms of the contract or the services are not provided as expected. We therefore, strongly urge Ofcom to adopt a purposive interpretation of the EECC and update its statement, to be published in the autumn, to exclude larger business customers from the transposition proposals for article 105(4).

### **Ofcom guidance on extended termination rights**

As we have previously articulated to Ofcom, the impact of extended termination rights is likely to have negative, unintended consequences for customers which will lead to less choice for customers and reduce the ability of communication providers to invest and innovate in new services and infrastructure. To help to mitigate some of these risks, we call on Ofcom to include, in the guidance it is planning to publish alongside its Statement, the following principles.

We believe a contract change should *not* be considered to have a negative effect on the end user, and so give them a right to leave their contract, where:

- A customer is not an active user of a product or service (e.g. it is an accessory service which is additional to the core product; or a calling rate to a particular number range or country), if the customer has not used this product or service in the past and is not likely to do so in the future.
- A contract modification is within the customer's expectations at the point of sale and the contract clearly and prominently explains when and how certain changes manifest (e.g. that future prices rises will be assessed by a method such as CPI/RPI).

- A contract modification affects additional services that do not form part of the customer's monthly recurring charge, unless they are habitual users of the service (e.g. the provision of extra on-line services or VAS features). These might be provided free to the customer, or they might be contracted to a third party, who is separate from the communications provider and who bills the customer directly.
- A customer wishes to terminate part of a bundle which has not been impacted by a modification and which can be distinguished as an individual part of the overall bundle.

Below we set out our answers to Ofcom's revised proposals for annual best tariff information and revised definitions for microenterprise, small enterprise and not for profit organisations.

# 1 Revised proposals for Annual Best tariff information:

*“Do you agree with our proposed changes to the GCs and our Guidance on General Condition C1 in relation to annual best tariff information?”*

- We agree with Ofcom's revised proposals for the annual best tariff requirements (GC C1.16) to exclude contracts that have not previously been subject to a fixed commitment period from annual best tariff notifications sent to consumers.
- As briefly mentioned in the letter that was sent by Mobile UK to Ofcom to which we were a signatory, our concerns regarding these proposals were the lack of consultation, differences in interpretation of the European Electronic Communications Code, and practical difficulties with sending annual best tariff notifications to customers with contracts that are not subject to a fixed commitment period.
- We continue to believe that pay-as-you-go customers have the information and flexibility needed to navigate between the various packages available to them, both with us, and with other providers. Customers on 'traditional' top-up tariffs and 'hybrid' tariffs are empowered to make informed and conscious decisions by choosing to make monthly payments although they are not contractually required<sup>1</sup> to.
- We note Ofcom's recommendation to send periodic reminders to customers in contracts that are not subject to a commitment period. We already proactively send notifications to our EE pay-as-you-go customers. Typically, we notify these customers that there are other pay-as-you go packages that may be better suited to their needs.
- We've made the process of changing between packages easy for our pay-as-you-go customers by enabling them to take up another pay-as-you-go package, by simply responding to the SMS message they've received from us. Depending on the customer's usage, we also suggest pay-monthly offerings if we have identified that the customer may benefit from adjusting their current pay-as-you go offering to a pay-monthly plan which offers better value for money, or that's more suited to the customer's needs and usage.

---

<sup>1</sup> We do not have a direct debit method of payment for pay-as-you-go customers.

## 2 Revised definitions for microenterprise, small enterprise and not for profit organisations

***“Do you agree with our proposal to remove financial thresholds from the microenterprise and small enterprise customer definition?”***

- Although we recognise financial thresholds have the potential to act as a useful customer segmentation tool, we agree (for the reasons articulated in paragraph 4.21 of the consultation) with the proposal to remove the criteria from the small and micro enterprise customer definition.
- While it may be possible to use third parties to help inform an understanding of a company’s financial status, mandatory collection of an imperfect data set for the purpose of regulatory compliance would create a set of complex IT system dependencies for communication providers that would substantially increase the implementation costs of the EECC. We agree that the use of business headcount is a more practical and proportionate way to implement these requirements of the EECC although, as set out below, information about organisational headcount is not necessarily straightforward to obtain.
- We note that at paragraph 4.28, Ofcom suggests the use of reasonable proxies where headcount information is not available. We consider that the use of financial or credit scoring information (wherever it is reasonably available and reliable) by communication providers could help inform their assessment of whether an organisation has a headcount of ten persons or less. Although we do not think that it is appropriate to use financial thresholds as a mandatory criteria for customer segmentation, use on an informal basis may be helpful to assist with customer profiling where modern employment practices (such as zero hours contracts) may skew a sales person’s assessment of organisational size. It would be helpful if Ofcom could recognise these alternative methods to provide CPs with greater guidance on proxies that may be considered reasonable.

***“Do you agree with our proposal to use a single definition to encompass microenterprise and small business customers and set a headcount threshold of 10 staff members? Please provide evidence to support your view.”***

- We agree that use of a single definition to encompass microenterprise and small business customers is a practical and proportionate way of implementing the requirements of the EECC. Although BT does not, at

present, maintain information about organisational headcount within our customer management tools (due to the variability of the metric) we agree with the analysis at paragraph 4.34 of the consultation. Further, the analysis of service usage contained within Table 1, accords with our own insight into the use of complex communications services by business users.

- While we support the use of a single definition, we note that there is significant variation between customers within this range in terms of the level of complexity of their communication needs and experience/ability in navigating the market. Typically, we expect that business customers towards the larger end of this definition are likely to purchase more complex, tailored solutions to meet their needs compared to customers with more basic needs who are working alone or with one employee. We ask that Ofcom is mindful of these variations as and when it considers new regulations for business customers so that they are appropriately targeted to the right business customer type.

***“Do you agree with our revised proposed definition of not for profit customer?”***

- We agree, for the reasons articulated in paragraph 4.51 of the consultation, with Ofcom's revised definition of not for profit customers.

***“Do you agree that the guidance we have proposed to help providers identify employee headcount should also apply to not for profit organisations?”***

- We are supportive of the pragmatic and flexible approach to compliance monitoring set out in Ofcom's consultation, published December 2019, and agree the guidance should be extended to encompass not for profit organisations.

Comments should be addressed to:  
BT Group Regulatory Affairs,  
BT Centre,  
London,  
EC1A 7AJ  
[Regulatory.affairs@bt.com](mailto:Regulatory.affairs@bt.com)

