



Virgin Media's Response to Ofcom Consultation : Implementing the new EECC – Revised Proposals for ABTN and Business Customer Definitions.

18 September 2020

Non-Confidential Version

Introduction

We welcome Ofcom's decision to reconsult on these areas of EECC implementation and broadly support the revised proposals over the initial proposed approach. However, as set out in our initial consultation response, [X] we do not consider that the obligation to implement the EECC by 21 December 2020 is as clear, as Ofcom suggests. We consider a "write out" implementation of EECC regulations simply in an attempt to maintain strict EU compliance without due regard to duties and an appropriate impact assessment would be inappropriate and has a significant potential to result in regulation that would work against the interests of consumers. Given that any substantive implementation of any new or amended GC regulation cannot be achieved before the end of this year (when our obligations under the EU Withdrawal Agreement come to an end), it seems that undue weight is being placed on technical compliance over the appropriateness of regulation that would best suit consumers' needs and the needs of the sector in general.

Notwithstanding that position, we set out our below our view on the specific proposals in this consultation in the event that our submissions on the necessity of bringing in regulation to meet the 21 December 2020 deadline are not accepted.

Annual Best Tariff Notification : Question 1

Ofcom is proposing to amend GC1.16 to exclude any contract that was not previously subject to a minimum commitment period from the scope of the requirements to send annual best tariff advice. We welcome the proposed amendment as we consider the reduced scope of the obligation provides a better and more proportionate approach to the provision of customer information.

Definitions for Business Customer Segments : Questions 2 to 5

Ofcom had proposed to define additional categories of business customers in order to replicate EECC definitions, whilst keeping existing categories which would continue to run alongside them.

It is now proposed that a more pragmatic approach is taken, noting that the EECC is not definitive about how these sectors should be precisely defined.

We agree that a more pragmatic approach is appropriate in this circumstance. As noted in our initial consultation response, the introduction of multiple new business customer categories could have had a negative impact on those sectors (leading to customer detriment, rather than providing customer protection). We consider that Option 2 of Ofcom's revised proposals makes most sense in this context. This provides protection for organisations (both commercial and not for profit) with up to 10 employees, which maps onto the existing Small Business definition under the Communications Act. We agree that, given the intent of the regulation is to protect those businesses who may not have significantly more bargaining power than consumers, a single definition based on a 10 employee ceiling is appropriate. We also consider that Ofcom's assessment of the business sector provides useful evidence, with businesses larger than 10 employees taking more sophisticated communications solutions. Greater engagement with providers on the required solutions suggests a more informed customer and more bargaining power to get their requirements delivered.

We do not consider that there is any material evidence to support extending the (consumer focused) protections offered by the EECC to businesses with up to 50 employees. As such we do not consider

that the creation of a new category would be proportionate. We do not support Option 1 set out in the consultation.

We also agree that it would not be appropriate to apply Option 3, in that it would require the assessment and definition of a new employee threshold (not previously considered as significant), between 10 and 49 employees. As noted, it would not seem to be an option that could be pursued in the absence of new evidence that clearly demonstrated an additional protection need for a business customer with more than 10 employees. We do not consider that there is any need that is so evidenced, to date.

We also agree that the Not for Profit sector should be aligned with the small business definition by the imposition of a 10 employee headcount. As we stated in our previous consultation response (along with a number of other respondents) the “uncapped” definition could have included large multinational charities and public sector organisations which often have significant bargaining power beyond even many medium sized corporate bodies. The intention of the EECC regulation was to ensure that not for profit bodies were treated in a comparable way with small businesses as they *“are likely to behave in a similar way to residential customers”*. Clearly this intent was not to protect large well-resourced and commercially astute organisation (not for profit or otherwise).

Finally, we also consider that the use of financial thresholds would have created additional difficulties and complexity. We welcome Ofcom’s new proposed approach to align the microenterprise and small enterprise definitions with the current small business definition (which has been established for a number of years and is well known within the industry). We consider that this alignment renders the requirement for a financial threshold to be unnecessary. We note that financial considerations may be a factor that is helpful in determining whether a customer is within the 10 employee definition, as communication spend may be relevant to determining this issue (in accordance with Ofcom’s proposed guidance), and this can also be applied to the not for profit sector however, we do not believe it is appropriate or proportionate to formalise financial thresholds in the definition.

Conclusion

We consider that the revised proposals represent significant improvements on the previous proposed approach, being more appropriate and proportionate regulation of the PAYG mobile sector and small business sector respectively. In that context we are supportive of these changes. However, as set out at the start of this response, we consider that it is unnecessary to implement EECC provisions without due consideration of their suitability to our national market. We do not seek to repeat our submissions on this issue in this specific response, but our support of these new proposals must be considered in that wider context.