

Fair treatment and easier switching for broadband and mobile customers Proposals to implement the new European Electronic Communications Code (the “Consultation”).

Having reviewed Ofcom’s Consultation, we set out our position on several key areas of concern below, followed by our responses to the specific questions set out in the Consultation.

Ofcom has set out a number of proposals in the Consultation and whilst we have provided high level feedback on each of these, the true implications on systems, customer journeys and third-party dependencies is unknown until in depth analysis is conducted for each of the proposals in turn. Implementing changes is a complicated process and one which involves significantly more than a change in terms and conditions. Regulatory changes are now taking up a significant proportion of our roadmap to satisfy Ofcom’s requirements to deliver changes at a time when we have already made significant amendments at Ofcom’s request, either because of legislation and General Condition changes or, at the request of the regulator that providers proactively make certain changes.

Given the business’ recent focus on implementing EOCN/ABTN, it has been unable to conduct detailed impact assessments on these proposed requirements, however on initial pass there is likely to be considerable business impact and change resource needed to sequence implementation of the various requirements and therefore the deadline for implementation of December 2020 is not tenable. At a minimum we would require 12-18 months from Ofcom’s final statement, which we understand is expected in June.

- **Split Linked Contracts**

We provided our response to the consultation *“Helping consumers to get better deals in communications markets: Mobile Handsets”* in September 2019 and remain concerned that Ofcom has yet to provide any evidence of harm caused to customers by split linked contracts and has failed to provide a response to our follow-up letter of 3rd December 2019.

Furthermore, in paragraph 6.25 of this consultation, Ofcom acknowledges that it has received views that argue that they misinterpreted the effect of Articles 105(1) and 107(1) and later in paragraph 6.26 it is stated that Ofcom is considering these submissions further. However, what is alarming is the fact that the new General Condition C1.17, which was first referenced in paragraph 6.73, states that where customers terminate their contract pursuant to C1.15 “Regulated providers shall not require the Relevant Customer to terminate their Mobile Device Loan Agreement and pay any amount due upon termination...”. This would appear to be the case even if the linked contracts were limited for 24 months. In addition, Ofcom provides guidance in Annex 9 in relation to what it would consider in order to determine whether a customer is disincentivised to terminate. We remain concerned that Ofcom has failed to address the points raised in our consultation response of September 2019 and letter of 3rd December 2019 and has proposed amendments to the General Conditions without acknowledging or addressing these in a meaningful way.

Tesco Mobile takes note of the Competition and Markets Authority’s report on Regulation and Competition dated January 2020, specifically their finding that regulation that restricts innovation

and market disruption causes harm to competition in the marketplace. As per the CMA's report "*competition is a key mechanism for improving outcomes for consumers*", "*leads to lower prices and better quality for existing products and services, and it promotes innovation in new products and services.*" Tesco Mobile share the CMA's concern that regulation could lead to stifling competition, and thereby depriving customers of these benefits. We note that Ofcom in the Consultation (*footnote 123*) have acknowledged that their proposed regulation would likely lead to some re-balancing pricing effects to the extent that prices reflect providers' expectation that customers are committed for a period of longer than 24 months. We consider that, in the case of split linked contracts of over 24 months being disallowed, particularly in the absence of any proven harm to customers, the proposed regulation will negatively impact competition and differentiation in the market as well as having a pricing impact in a way not anticipated by Ofcom. [REDACTED]. We are of the view that not only will a huge number of customers be disadvantaged by the proposed regulatory changes, the market generally will be at risk of becoming distorted, with a negative impact on competition being an inevitable result.

Additionally, Tesco Mobile are at a loss to understand why, with the transition period for Brexit coming to an end at the end of 2020, Ofcom are insistent upon implementing EECC provisions in the United Kingdom. Despite there being no evidence of any harm caused to customers, if European legislation is transposed into the United Kingdom where there is no legal requirement for this to happen, we consider this to be both unjust and a waste of time and resource of both the regulator and providers, both of which could be more usefully spent elsewhere to actually benefit consumers in other areas.

Finally, it is our understanding that Ofcom's proposal on split linked contracts is likely to have significant impact on the VAT treatment of such contracts, resulting in a financial implication for providers and customers. It is therefore something which will inevitably impact the way in which Tesco Mobile offers a hugely popular customer proposition.

- **ABTNs – PAYG**

As explained in written correspondence with Ofcom, we remain unclear as to where in Ofcom's statement on end-of-contract notifications and annual best tariff information it is made clear that PAYG customers are in scope for the requirement to issue ABTNs, and as Ofcom is aware, this was certainly not Tesco Mobile's understanding prior to our meeting with Ofcom on 14 January 2020.

Ofcom have referred us to General Conditions C1.18 to C1.20, which we are unsure how to implement for PAYG customers, and we are yet to receive any practical guidance in relation to the same. Specifically, much of the information required to be included in an ABTN either doesn't apply to a PAYG customer, for example, C1.18(b): no notice period applies, or C1.18(d): there is no current subscription price; or would be very complicated to deliver, for example, C1.18(h): the regulated providers best tariff. On C1.18(h) in particular, we note that Ofcom has given guidance on best tariff recommendations for different types of contracts in their statement, but has not mentioned pre-pay at all, despite it being the most complex customer type to prepare appropriate best tariff information for, given that they have chosen not to tie themselves into any fixed term or commitment period at all. C1.20 also presents a challenge as it requires providers to deliver this information in a durable medium. We do not hold any data for PAYG customers which would allow us to send them letters or e-mails, so the only means by which we would send them this

information would be text message, which we consider to be a sub-optimal method bearing in mind the volume and complexity of information being provided.

- **Right to exit**

Broadening the right to exit for customers will create uncertainty for both the customer and providers. It opens up the debate of what is considered beneficial, and separately what one customer considers beneficial may not be the same for another customer. Providers cannot be in a position of having to defend universal changes with overarching benefits against customers who consider otherwise or use it as a means to terminate a contract without penalty. Further, the requirement to provide notification even for administrative changes seems unnecessary and overly burdensome and unlikely to be appreciated by customers.

In addition, we refer to our point made under Spilt Contracts above. Customers are afforded 0% APR so long as they are a customer of ours. We acknowledge that other players in the market, namely quad players, will be less impacted by this because they continue to maintain a billing relationship with the customer as a result of other service offerings continuing.

- **Implementation Timeline**

We would request Ofcom's consideration of our proposed disaggregated timelines as set out in our response to Question 18.

Question 1: Do you agree with our proposed changes and additions to the defined terms used in the GCs in order to align with the EECC, as set out in Annex 11?

Broadly speaking, we agree with the changes and additions to the defined terms in the GCs, however we have the following comment on one specific definition:

1. The way in which the EECC defines "microenterprises" and small enterprises" creates a burdensome requirement for providers. Whilst we agree with Ofcom's interpretation of EECC's definition, we don't measure our customers in this way, i.e. the number of employees or turnover of a company and do not collect this data. We would be in favour of reverting the definition back to a connections based approach post-Brexit.

Question 2: Do you agree with our proposed changes to the GCs to implement Article 102, as set out at Annexes 11 and 16?

We understand that Article 102 relates to the requirement that, before a residential customer is bound by a contract, all providers of electronic communication services must provide specified information about the service they will be providing ('contract information'). Whilst we are comfortable with this concept, we will need to perform a detailed review of the required system changes, as well as the training and sales journey implications. For any additional requirements regarding format of specified information which may be made in future by Ofcom, Tesco Mobile would request enough notice for any necessary technical development to be made to comply with these requirements.

Question 3: Do you agree with our proposed guidance in Annex 6 on our expectations for how providers should comply with the provision of contract information and the contract summary?

For pre-pay customers the sales process does not give us the opportunity to provide contract information in the template format proposed and nor does it provide the opportunity to gain their express prior consent to understanding the terms and conditions. We require clarity and guidance on the application of pre-contract information for pre-pay customers.

Where customer journeys are conducted via telesales or in store, we are unsure as to the mechanics of us providing them with the summary in a durable medium ahead of entering into the contracts. Specifically, if we send the customer an e-mail whilst on the phone or in store, would we need to insist on them reading it before they entered into the contract or would it be at the customer's discretion whether they do this. We are concerned that it would be difficult to audit that the customer has read the summary sent to them and also that this process would interrupt the flow of the customer journey and potentially be a barrier and a point of frustration for customers who have often intimated that they want an easy and time effective process from us.

Question 4: Do you agree with our proposed changes to the GCs to implement Article 103 and our proposed approach to implementing Article 104, as set out in Annex 11?

We agree with these changes but would request that the timelines are extended to be more reasonable, in line with our response to question 18 below. We are mindful that negotiations with a third party will necessarily involve an RFI/RFP process which can take more than 6 months end to end.

Question 5: Do you agree with our proposed changes to the GCs to implement the requirements in Article 105, as set out in Annex 12?

No, we are not in agreement with Ofcom's proposed changes, as set out in our key areas of concern above.

Question 6: Do you agree with our proposed changes to the existing guidance as summarised here and set out in Annex 7?

We do not agree with the proposed changes, as set out in our key areas of concern above.

Question 7: Do you support our proposals to introduce (a) new general switching requirements for all types of switches for residential and business customers and (b) specific switching requirements on information, consent, compensation and notice period charges for residential customers?

During the original Auto-Switch project, we played a key role in the cross industry steering groups and we would welcome the opportunity to be part of these again. For the purposes of our response here, we are generally supportive but would comment as follows:

- Tesco is open to the proposal that the customer should be able to choose the date of the switch or port. This was discussed during Auto Switching, with our proposal being that the gaining provider should lead where the customer could text a switch trigger word such as "ready" once the new SIM is in their phone and they are ready to switch. We believe this offers several Customer benefits and puts them in control.
- Tesco Mobile notes Ofcom's requirement around continuity of service, where technically feasible, throughout the switching and porting process. There is usually a short loss of service during the switch/port but this is much shorter than the 24 hour requirement. We would like clarification that a short disconnection of this type is not in scope.
- Regarding the new GC requirement for providers to refund pre-paid credit on request, we are concerned that this will increase the risk of fraud and money laundering, pre-paid credit being an established way to launder money.
- We are of the view that allowing a customer to port their old number for up to one month after the switch has occurred will be very complex and expensive to make system changes for and to automate. We are concerned that the customer experience is likely to be poor if we use a manual process, such process being a slow and onerous one.

Question 8: Do you support our proposed guidance in Annex 8 on compensation for residential customers?

Tesco Mobile will be required to provide residential customers with compensation within 30 days. We would like to flag that there are externalities that could delay the payment of compensation and ask Ofcom whether a provider must pay within 30 days or the customer must receive the compensation within 30 days.

Question 9: Do you agree with our assessment that device locking can deter customers from switching and cause customer harm?

We can see the reasons for Ofcom's determination of potential customer harm.

Question 10: Do you agree with our assessment of the effectiveness of Options 1 and 2 in reducing the consumer harm that can result from device locking and the impact on providers of Options 1 and 2?

Yes, we agree with Ofcom's assessment.

Question 11: Do you agree with our proposal to prohibit the sale of locked mobile devices?

Whilst Tesco Mobile understand the reasons for this proposal, we currently do sell locked devices and so will need to address some practical issues to implement this prohibition. Additionally, unlocking subsidised devices is likely to increase our breakage risk.

We currently plan to request manufacturers to stop supplying unlocked devices, however, as devices are locked at source, it will take some time to work through the stock we already have in our supply chain. We are considering the use of a separate stock keeping unit for the unlocked devices to enable us to monitor the volume of locked devices that remain within our channels. We expect to have all our devices unlocked by 21st December 2020 however we ask that Ofcom consider our request for extended timelines in our response to question 18 to allow for delays

which may be experienced given we are working within tight timescales to deliver a substantial change to our business.

Question 12: Do you agree that we should protect customers by issuing guidance on our proposed approach when considering the case for enforcement action against non-coterminous linked contracts?

Yes, it would be helpful for Tesco Mobile for clear guidance to be provided on this topic. We are conscious that some providers are also regulated by other bodies (such as the FCA) and are therefore obligated to comply with many of the rules of conduct which Ofcom will be considering in Ofcom's assessment when considering enforcement action. For example, FCA rules oblige Tesco Mobile to offer appropriate information to customer at point of sale to help them understand the implications of entering into such contracts and we feel this should be taken into account as part of any assessment.

We are in favour of Ofcom giving due consideration to the overall benefit to the customer of remaining in a non-coterminous linked contract to be able to deliver a balanced approach to decision making in cases where enforcement is considered. For example, Ofcom reference customers potentially being faced with "a material financial impact, such as losing a discount," on switching before the end of the commitment period; Tesco Mobile would not view the word "discount" to be appropriate here, and instead consider many customers to view their ability to spread payments over a period of time as a considerable benefit.

Question 13: Do you agree with our proposed guidance in Annex 9 which sets out our proposed approach to assessing whether certain types of non-coterminous linked contracts are likely to act as a disincentive to switch?

We do not agree with the proposed guidance, as set out in our key issues list above.

Question 14: Do you agree with our proposal to mandate emergency video relay for emergency communications to be accessed by end-users who use BSL?

We would ask that Ofcom be more explicit about how industry will fund this, as we feel it should be on a fair and reasonable basis. We do not agree that the cost of providing this should be covered by mobile providers.

Question 15: Do you agree with our proposal that the obligation to provide emergency video relay free to end-users should be imposed on regulated firms that provide internet access services or number-based interpersonal communications services?

Please see our response to question 14.

Question 16: Do you have any comments on our proposed approval criteria for emergency video relay services, or the proposed approval process?

No.

Question 17: Do you agree with our proposal to a) extend the current requirement to cover the other specified communications i.e. any communication (except marketing) that relates to a customer's communication service, and b) extend the GC so that any customer who cannot access communications due to their disability should also benefit from accessible formats? When answering please provide evidence of any benefits or costs.

Yes.

Question 18: Do you agree that implementation by December 2020 is reasonable?

We do not agree that implementation by December 2020 is reasonable. We do not feel this deadline would afford us enough time to implement Ofcom's proposed changes given we are unlikely to get certainty on these proposals until May/June 2020.

We are of the view that a more comprehensive impact assessment would have resulted in a more accurate estimation of how much more time would be needed for implementation.

We would suggest longer estimated disaggregated timelines as follows:

Section 4 – full impact assessment and systems changes would be 18 months from final consultation.

Section 5 – systems changes would be 18 months from final consultation.

Section 7 – systems changes would be 18 months from final consultation.

Section 8 – systems changes would be 12 months from final consultation.

Section 10 – systems changes would be 12 months from final consultation.

Question 19: Do you agree with our proposed changes for implementing the requirements in Article 108 and Article 109 to reflect the differences between these EECC provisions and their predecessors in the Universal Service Directive?

We fully support the proposal to provide documentation in accessible formats however we would like to express some concerns about the practicalities of providing service messages in accessible formats, particularly those which may be time sensitive, such as a customer's data limit being reached or an outage related service message. In many instances, it would be impossible for a provider to provide such service messages in an accessible format in a timely fashion and we would request this challenge be recognized.