

Dear Sirs,

We are writing in response to the consultation on fair treatment and easier switching for broadband and mobile customers.

Whilst we understand that changes have been proposed to bring the GCs in line with the EECC by 20 December 2020, we believe the proposals go above and beyond the requirements of the EECC and, in some cases, have the effect of preventing competition and innovation.

Right to exit following contractual changes

When providers operate within a competitive market, they incur significant sales and marketing costs in the acquisition of customers. Fixed term contracts enable providers to offset these costs. During a fixed term, providers may need to make contract modifications to ensure customers are being effectively served in a constantly changing, competitive environment. The proposal to introduce the right to exit for **any** contractual modification (except those that are exclusively beneficial, administrative or required by law) whilst also increasing the information considered to be a core element of the contract, means customers are able to use this opportunity to exit a fixed term contract for reasons that are not detrimental to them. This may be for minimal changes that do not affect core subscription prices, but that are necessary and cannot be proven to exclusively benefit all customers. For example:

- Terms of ownership in relation to equipment provided, including how equipment must be stored and operated;
- Additional terms or pricing for new products that customers can opt out of;
- Changes to fair usage policies based on consumption trends/effect on network;
- Changes to debt collection procedures that will only affect customers in the event of non-payment;
- Changes in liability cover dictated by insurers;
- Changes to the usually available broadband speed due to changes in providers' customer profile.

We do not believe that customers should have the right to exit where changes to contractual terms:

- do not affect the subscription prices the customer has agreed to pay;
- are for optional services; and/or
- do not affect the level of service provided.

For competition to be effective, there must be a return on investment when acquiring customers. In setting contract prices, providers will consider the initial cost to acquire a customer and the return on that investment over the entirety of the fixed term contract. If customers are able to exit fixed term contracts for non-detrimental changes, prices will inevitably have to increase to ensure a return on investment over a shorter period of time, which we believe will have a greater detriment of the customer and competition in the market.

Provision of information to customers about their services

The EECC sets out broadly the information that must be provided to customers before they are bound by a contract. We believe the requirements in the revised GCs exceed the information required by the EECC, and impose stricter requirements on providers who operate off-premises and that operate in the business to business market. Examples of these stricter requirements include:

- Providers will be required to explain RPI and CPI to micro and small business customers as it is believed that these customers would not be aware of how these uplifts would affect their prices in practice. This is despite RPI and CPI affecting most charges incurred during the course of business, both in terms of products offered and received by businesses, including interest rates, tax allowances, and wages. Insisting on a requirement to explain RPI and CPI to a customer that is already aware of these measures could not only be considered patronising but

also disproportionate to the perceived harm. We would argue that this information should be made available for those customers that feel they need further information but should not be forced upon them during the switching process.

- The proposed requirement to include VAT in the core subscription prices would differentiate telecoms from most other utilities a business customer would expect to receive including gas, electricity and water, which we believe could lead to more confusion for customers. Business customers are used to dealing with business products and are aware that prices are quoted excluding VAT. We therefore feel that this change is disproportionate and does not deliver a customer benefit.
- The proposed requirement to include information on complaint handling procedures, the ADR Scheme and the Ofcom Approved Complaints Code specifically for those providers who do not offer contracts from fixed premises. We support easy access to this information but disagree with the proposed method of implementation. This information has always been published in line with the General Conditions and it is unclear what customer harm this change is seeking to address.
- In order to provide a date for the service to be provided with any certainty, providers are required to place orders for services to switch, check network availability and/or arrange for new services to be installed. In order to meet the proposals, providers will be required to complete this work prior to the customer being bound by the contract and it is unclear what customer harm this is seeking to address.
- require providers to place orders prior to customers being bound to the contract, in order to confirm the date from which the service would be provided. It is not clear to us why this information would be required to be provided prior to the customer being bound by the contract.
- Information to be provided in a durable medium that was not previously required or only included the general information publication requirements, including: service level guarantees; the existence of after sale services or commercial guarantees; refund and compensation arrangements; broadband speed information to include the minimum and normally available speed, in addition to the maximum download (which is the standard speed advertised for business customers) and upload speeds. Again, we support easy access to this information but do not agree that providing the information a durable medium prior to the customer being bound by the contract is the best method of implementation.

Information in a durable medium

It is considered that providing the information specified by Ofcom will provide greater customer protection and make it easier for customers to make an informed decision to switch providers. Under the proposals customers will also receive a large amount of information that they must navigate in a durable medium before being able to agree a contract. Whilst we agree with the provision of some of the information proposed, we feel that the method of delivery does not make the information easy to absorb or compare for customers as intended. Providers should be given more flexibility in how this information would be best delivered to their customers. We would support key terms being provided to customers with details on how to find more information should the customer require this, in addition to the information being published on our websites as is already required under the general information publication requirements.

Legal considerations

We are also concerned that the proposals do not take into account the legal aspects of contract formation. Contracts are formed if there is: an invitation to treat; an offer; acceptance; consideration; and an intention to be bound. There is no requirement to provide the additional information being proposed in order for a contract to be formed in law. We believe the current protections are already sufficient to protect customers (i.e. the consolidation period).

We understand the purpose of this consultation is to give full effect to end-user provisions of the EECC and in a post-Brexit landscape it has not yet been settled how far the UK can move away from EU regulations. However, the Prime

Minister and UK Foreign Secretary have already stated that the UK will not have close alignment with EU laws and that doing so would defeat the point of Brexit¹.

Given the implementation deadline of the EECC of 20 December 2020, the uncertainty of the application of EU Directives during the transition period and the fact that this period ends 11 days after the proposed implementation date, we would urge Ofcom not to proceed with its proposal to bring the GCs in line with the EECC.

Should you wish to discuss any of our comments in relation to this consultation please do not hesitate to contact me on [☎].

Yours sincerely,

Rachael Spencer
Compliance Officer

¹ <https://www.ft.com/content/2e255fd2-45a3-11ea-aeb3-955839e06441>
<https://www.theguardian.com/politics/2020/feb/02/uk-refuse-close-alignment-eu-rules-boris-johnson-trade>