

Carmen To

CC: Rurmel Miah

Ofcom

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By email only: improving.engagement@ofcom.org.uk

Dear Carmen

Dear Rurmel

Response to Ofcom's consultation on end-of-contract and out-of-contract notifications

Please find enclosed Telefonica UK Limited's ("**TUK**") response to Ofcom's consultation on end-of-contract and out-of-contract notifications ("**Consultation Paper**"). O2 is the commercial brand of TUK.

In summary, as a matter of principle, TUK supports initiatives aimed at protecting the best interests of our customers. We take the view that End of Contract notifications sent by communications providers prior to the end of the minimum contracting period could assist customers in making informed decisions.

However, we have some reservations as regards the content, structure and frequency of such notifications as contemplated by Ofcom which we outline in more detail in this submission.

In addition, we take the view that **[CONFIDENTIAL]**.

As regards both types of notifications, we are concerned about the correlation between the approach proposed by Ofcom and potential implications from a data privacy perspective, as per the rules mandated under GDPR; some of the content proposed by Ofcom could be construed as having a marketing related purpose and therefore could only be sent to customers that have opted-in to the receipt of such marketing communications.

Furthermore, when deciding the timeline for rolling-out such mandatory notifications, Ofcom needs to be mindful of potential overlaps with other live consultations and regulatory actions, such as for example Auto-Switch and the consultation on fixed term contracts.

[CONFIDENTIAL]

Please do not hesitate to contact us if you have any questions in relation to our response.

Yours sincerely

[CONFIDENTIAL]

Question 1 – Do you agree with our assessment of harm relating to residential consumers and Small Businesses?

We understand that Ofcom is frustrated by the perceived lack of customer engagement with respect to the choices available to them at the end of their minimum contract periods with their respective operators. Ofcom considers that communications providers (“CPs”) do not provide their customers with sufficient information to enable customers to make an informed decision regarding their options at that stage with the result that they may end up incurring higher prices or changes to their communication services.

TUK is a customer-led¹ organisation. We therefore support initiatives aimed at protecting the best interests of our customers.

We take the view that End of Contract notifications (“ECNs”) sent by CPs prior to the end of the minimum contracting period drawing customers’ attention to the end of the minimum contract period (“MCP”) could assist customers, as also pointed out by Ofcom in its consultation paper.

However, we strongly believe that an appropriate balance should be struck between (i) the volume of information supplied to customers, (ii) the protection of customers’ personal data as also mandated under the GDPR rules, (iii) the quality of the customer experience and (iv) the costs of implementing the ECN proposal, as now being put forward by Ofcom. We would caution against regulatory intervention that adopts a ‘one-size fits all approach’ as this will not be appropriate in all cases.

In this context, we believe that the proposed mandated content should be carefully analysed in line with the data protection rules under GDPR and the costs involved for transforming the internal architecture systems.

TUK’s current approach regarding customer engagement

[CONFIDENTIAL]

Question 2 – Do you agree that providers should send both end-of-contract and out-of-contract notifications?

TUK believes in fair and transparent relationships with its customers and therefore we take the view that customers should be informed of how they might be impacted when their contract with a CP comes to an end via an end-of contract ECN.

Having said that, we take the view that whilst customers should be aware of the MCP end date, we believe that Ofcom’s proposal regarding ECNs should consider how to best reconcile (i) potential conflicts between the proposed content of ECNs and other regulations such as GDPR, which limit the scope of CPs’ capacity to proactively engage in marketing-related communications with customers² and (ii) potentially disproportionate costs **[CONFIDENTIAL]**

Question 3: Do you agree with our proposal that notifications should be sent to all residential and Small Business customers who take Public Electronic Communications Services?

As mentioned above, as a matter of principle, we agree with Ofcom’s proposal as regards CPs sending ECNs to their residential and Small Business customers; however, this should be subject to our comments in response to Question 4 below regarding the content, structure, method, timing and frequency of such ECNs.

Specifically, we would draw Ofcom’s attention to the fact that even if Ofcom mandated the sending of ECNs to all residential and Small Business customers (including the content proposed by Ofcom), in practice this might not be

¹ As per our customer-led, mobile-first strategy.

² We believe that the risk of ECNs being potentially considered as marketing communications cannot be ruled out, especially given the requirement to include options and potential savings the customer can explore the end of the MCP.

feasible for data privacy reasons, to the extent that ECNs might be construed as marketing related communications and not all customers have provided consent to receive such.

[CONFIDENTIAL]

Question 4: Do you agree with our proposals on the content of the end-of-contract notification?

Please see below our input in relation to Ofcom's proposals regarding the content of the ECNs.

[CONFIDENTIAL]

Question 5: Do you agree with our proposals on the structure, method, timing and frequency of the end-of-contract notification?

[CONFIDENTIAL]

As regards the method for sending the ECNs to customers, we understand that Ofcom takes the view that such communications should take place (i) via the customers' preferred channel of communication with his/her provider or, where such preference is not expressed, (ii) via the same channel used to communicate monthly bills.

The use of a customer's preferred channel of communications with their CP would not be automatically feasible for the communication of ECNs. [CONFIDENTIAL] that implementing a customer's preferred method through SMS for data-only plans (tablets) is not possible, as such devices cannot receive SMS communications (even if, generally, this might be the customer's preferred communication channel), so an alternative channel for sending the ECN would have to be used.

In terms of the structure and content of the ECN, as proposed by Ofcom, please consider our comments in response to Question no. 4 above.

Question 6: Do you agree with our proposals on the content of the out-of-contract notification?

[CONFIDENTIAL]

In this context, we consider that out-of-contract notifications could generate [CONFIDENTIAL].

As regards Ofcom's proposals on the structure, method and frequency of the out-of-contract notifications, we believe that our comments included under Question 4 above are applicable.

Question 7: Do you agree with our proposals on the structure, method and frequency of the out-of-contract notification?

As mentioned in our response to Question no. 6 above, we take the view that sending out of contract notifications to customers outside their minimum contract period may be [CONFIDENTIAL].

Question 8: Do you agree that our proposals are both effective and the minimum necessary to achieve our policy objectives?

As a customer-led organisation, we agree that transparent communication with our customers helps improve customer satisfaction and reduce potential harm. [CONFIDENTIAL]

In this context, we believe that additional intervention along the lines proposed by Ofcom could be excessive in certain circumstances, as well as potentially [CONFIDENTIAL]. Therefore, we consider that Ofcom should carefully consider the scope and content of any mandated ECNs to ensure that any regulatory intervention is proportionate ([CONFIDENTIAL]).

As we have already mentioned above, the notifications proposed by Ofcom could raise concerns from a GDPR perspective. On the one hand, such notifications could be interpreted as marketing-related communications and therefore their spread would be limited only to such customers who have expressly consented to receive marketing communications **[CONFIDENTIAL]**, thus potentially limiting substantially the scope of ECNs as envisaged by Ofcom. Further guidance on this point after potential consultations between Ofcom and ICO would be most welcome. On the other hand, especially in the case of out-of-contract customers, **[CONFIDENTIAL]**.

Question 9: Do you agree with the impacts we identify, and the approach we take to quantify these impacts, in our assessment in Annex 6?

Please refer to our response to question no. 10 below as regards the potential costs triggered by the implementation of Ofcom's proposal in its current format.

Question 10: Do you agree with our provisional assessment that the potential costs for providers are not disproportionate in order to achieve our policy objectives?

We take the view that the cost estimations put forward by Ofcom are general and appear to rely on generic assumptions regarding the capability of CPs' systems architecture, especially when considering the significant volume of information that Ofcom proposes to be included in ECNs.

[CONFIDENTIAL]

Question 11: Do you agree with our proposed implementation timescale for end-of-contract notifications and for the one-off notification to customers who are already outside of their minimum contract period?

As mentioned in our response to Question no. 1 above, our view is that ECNs sent by communications providers prior to the end of the minimum contracting period could be helpful to customers provided that an appropriate balance is struck between the volume of information supplied to customers and the quality of their customer experience. On the other hand, as regards out-of-contract notifications, as also mentioned in our response to Question no. 6 above, **[CONFIDENTIAL]**.

Ofcom needs to carefully consider the timing of such communications to customers, given that Ofcom is currently considering envisaging other proposals as well (e.g. the Auto-Switch reform) whose implementation in the market may very well end up overlapping with ECN implementation.

[CONFIDENTIAL].

As Ofcom's core aim is to ensure that markets work effectively for consumers, we would strongly urge Ofcom to balance customers' interest when mandating rules that could lead to customers receiving substantial volumes of notifications and information from CPs within a short timeframe.

Question 12: Do you have any comments on the draft condition set out in Annex 9 to this document?

Please see all our input included in the responses to the questions above.

ANNEX 1

[CONFIDENTIAL]