

TO: Oliver Rawlings
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

11 February 2019

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

Telefonica UK response on the Consultation on end-of-contract notifications and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband.

Dear Oliver,

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

On 12 October 2018, TUK provided a response to the first consultation relating to end-of-contract notifications and out-of-contract notifications ("**First Response**"). TUK stated in the First Response that it supports initiatives aimed at protecting the best interests of its customers. TUK expressed the view that End of Contract notifications ("**ECNs**") sent by communications providers ("**CPs**") prior to the end of the minimum contracting period could assist customers in making informed decisions. However, TUK noted some reservations as regards the content, structure and frequency of such ECNs contemplated by Ofcom.

[CONFIDENTIAL]

TUK supports the provision of more information to customers where it is deemed useful for the customer to assist in informing them of their options. **[CONFIDENTIAL]**

The concerns expressed by TUK in the First Response with regards to communications with opted-out customers and the interaction with GDPR remain largely unresolved. TUK would welcome further discussion by Ofcom around this issue and provide clear direction in conjunction with the Information Commissioner's Office.

In regards to the Consultation Paper, TUK has additional concerns regarding the widened scope of the proposed communications to encompass *all* business customers and the ambiguity of the "lighter touch approach" in relation to these customers.

[CONFIDENTIAL]

Yours sincerely,

[CONFIDENTIAL]

SECTION 4: SCOPE OF END-OF-CONTRACT AND ANNUAL BEST TARIFF NOTIFICATIONS

Question 1: Do you agree with the way we propose to implement the requirement to provide end-of-contract notifications in terms of the services they should cover?

Question 2: Do you agree with the way we plan to implement the requirement to send end-of-contract notifications and annual best tariff notifications to residential consumers and businesses?

[CONFIDENTIAL]

In relation to business customers, TUK would welcome clarification in respect of the term “end-user”.
[CONFIDENTIAL]

SECTION 5: END-OF-CONTRACT NOTIFICATIONS

Question 3: Do you agree that end-of-contract notifications should be sent to end-users before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point?

TUK agrees with the proposal **[CONFIDENTIAL]**

Question 4: Do you agree with our proposal not to specify in a prescriptive way the words and language used in end-of-contract notifications?

TUK welcomes this proposal by Ofcom, and takes the view that whilst customers should be aware of the minimum contract period (“**MCP**”) end date, TUK considers that Ofcom’s proposal regarding ECNs should consider how to best reconcile: (i) potential conflicts between the proposed structure of ECNs and other regulations such as GDPR, which limit the scope of CPs’ capacity to proactively engage in marketing-related communications with customers, and (ii) potentially disproportionate costs that may result from imposing obligations on CPs **[CONFIDENTIAL]** TUK is concerned that sending ECNs to those opted-out customers might not be feasible, to the extent that such ECNs would be construed as marketing communications (rather than compliance with a regulatory obligation).

TUK would like to understand further what steps Ofcom will be taking to communicate with the public in respect of the new proposals and how they interact with their marketing preferences; we further believe that additional guidance provided in conjunction with the Information Commissioner’s Office (“**ICO**”) is strongly needed in order to ensure there is no conflict between the two regulations.

[CONFIDENTIAL]

Question 5: Do you agree with our implementation proposal for the end-of contract notification to include the date on which the fixed commitment period will end?

[CONFIDENTIAL] TUK agrees that contract end dates should be included in ECNs.¹ **[CONFIDENTIAL]**

Question 6: Do you agree with our implementation proposal for the end of contract notification to include details of the services which the provider currently provides to the end-user under the relevant contract?

[CONFIDENTIAL]

TUK welcomes the proposal that business customers only need to be notified that there are other services provided under their contract, but that these do not need to be listed in any ECN. **[CONFIDENTIAL]**

¹ **[CONFIDENTIAL]**

Question 7: Do you agree with our implementation proposal that the end-of-contract notification must include information regarding notice periods?

TUK is supportive of ensuring greater transparency and also appropriately informing customers, which in turn, would enable them to make informed decisions. TUK welcomes Ofcom's proposed approach regarding notice periods.

However, TUK notes that new Auto-Switch reform ("**Auto-Switch Rules**") will come into force in July 2019, allowing customers to change providers more easily. The Auto-Switch Rules will impact on relevant notice period charging for those customers deciding to port out of a network. In this context, TUK considers that it would be useful for Ofcom to acknowledge how the Auto-Switch Rules could impact or interact with the ECN / Annual Best Tariff Notification ("**ABTN**") proposals.

Question 8: Do you agree with our implementation proposal that the end-of-contract notification must include information regarding early termination charges?

TUK agrees with this proposal; as a customer-led organisation, TUK is supportive of greater transparency and also measures which enable customers to make informed decisions. TUK notes that it is equally relevant to inform customers what charges may apply, if any, when they are approaching the end of their contract or when they are out of contract should they choose to leave.

Question 9: Do you agree with our implementation proposal that the end-of-contract notification must include information regarding other contracts which the provider currently provides to the end-user?

[CONFIDENTIAL]

In relation to SME and Enterprise customers, TUK notes that Ofcom acknowledges that the list of contracts required for larger businesses may be too large and impractical to provide. [CONFIDENTIAL]

Question 10: Do you agree with our implementation proposal that the end-of contract notification must include information regarding how to terminate the contract?

[CONFIDENTIAL]

TUK notes that this will also form part of the information requirements as part of the Auto-Switch Rules [CONFIDENTIAL]

SECTION 6: BEST TARIFF ADVICE

Question 11: Do you agree with our implementation proposal that best tariff advice should include the monthly price currently paid, and any changes after the end of the fixed commitment period?

TUK agrees in principle to the proposal in line with the comments above relating to transparency and allowing customers to take an informed view. [CONFIDENTIAL] In terms of how this relates to the provision of best tariff advice and recommending any changes, this needs to be read in conjunction with customer's allowance/usage, in order to help the customer make an informed decision around allowance versus usage versus cost. Customers have different reasons for choosing the tariff they are on. TUK raises concerns around the provision of best tariff advice in answer to Question 15 below and also notes the response from the ICO highlighted in the Consultation² on ECN and ABTN, and proposed scope for a review of pricing practices in fixed broadband published 14 December 2018 ("**the Consultation**"); namely, that the inclusion of an offer is likely to result in the communication falling within the

² Pg.58 para 6.82.

definition of direct marketing. If a service provider incorporates offers into their end-of or out-of contract material at any point, they will need to adhere to the specific requirements of the GDPR, DPA and PECR³ relating to this activity.

TUK notes Ofcom's acknowledgement of these points⁴ within the Consultation and confirms that where a customer has opted-out of direct marketing, TUK would be supportive of a proposal that required CPs to send that customer an ECN or ABTN that contains as many of the required elements as lawfully possible.

[CONFIDENTIAL]

Question 12: Do you agree with our implementation proposal that best tariff advice should include changes to the service provided because the fixed commitment period is ending?

TUK would welcome clarification on this point. **[CONFIDENTIAL]** TUK believes it is important that Ofcom provide guidance regarding what the base tariff from which the 'changes to the service' are calculated should be, namely the standard tariff or promotional tariff. **[CONFIDENTIAL]** TUK reiterates its concerns regarding information that might be construed as a marketing communication by customers that have opted-out of such communications.

Question 13: Do you agree with our implementation proposal that best tariff advice should include the date on which the fixed commitment period ends for financially linked or otherwise dependent contracts taken with the same provider, for subscribers on residential contracts?

[CONFIDENTIAL]

Best tariff advice should be as relevant as possible for the customer, i.e. setting out the impact of what happens once one of the contracts reaches the end of the MCP, delivered at the appropriate time for the customer to avoid confusion as to which contract it relates to. **[CONFIDENTIAL]**

Question 14: Do you agree with our implementation proposal that best tariff advice should include the options available to the subscriber after the fixed commitment period has ended?

TUK has provided details regarding concerns around the provision of tariff advice to customers who have opted-out of such communications in response to Question 15 below. TUK also acknowledges that Ofcom proposes to issue guidance on what they would expect CPs to include in any communications to the customer; TUK reiterates its concerns around the possibility for the communication to cause confusion and information overload particularly in the context of other imminent regulatory reform such as the Auto-Switch Rules.

The options proposed by Ofcom as part of the draft guidance are to:

- "a) stay on their existing contract;*
- b) switch to a new contract with the same provider (including but not limited to those referred to as part of the provider's best tariffs);*
- c) switch to a new contract with a different provider; and*
- d) for subscribers on bundled handset and airtime mobile contracts only, switch to a SIM-only deal.*

*The advice should also state that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider."*⁵

[CONFIDENTIAL]

³ ICO response to July 2018 consultation which cites Articles 7, 21(2) GDPR (EU General Data Protection Regulation), Regulations 22(3)(a), (b) and (c) of PECR (Privacy and Electronic Communications Regulations 2003), the DPA (Data Protection Act 2018).

⁴ Pg.59 para 6.87.

⁵ Pg 49 of the Consultation para. 6.35 & 6.36.

Question 15: Do you agree with our implementation proposal that best tariff advice should include the provider's best tariff and with our draft guidance for subscribers on residential contracts that:

- a) providers should give residential consumers at least one and up to three best tariffs;
- b) the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c) one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d) one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e) one tariff can be the cheapest upgrade tariff;
- f) one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g) tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) is about to end or has already ended.

[CONFIDENTIAL] In mandating such notifications, Ofcom would be leaving it to CPs to assume any data protection risk while balancing all relevant regulatory obligations. TUK is highly supportive of Ofcom engaging in conversation with the ICO in order to determine the most appropriate way of delivering the information or providing more adequate guidance to CPs in delivering to opted-out customers.

- a) **[CONFIDENTIAL]**

TUK suggests caution when the using language such as "best tariff" to ensure that there is no scope for mis-selling and that the use of the term "best" does not result in false advertising. **[CONFIDENTIAL]** However, TUK would also invite some standard guidance on the parameters of what Ofcom means by "best" tariff, for example whether Ofcom considers this to be simply the cheapest tariff, or the headline price of promotional offer. For example, **[CONFIDENTIAL]**

- b) **[CONFIDENTIAL]**

- c) **[CONFIDENTIAL]** TUK argues that cheapest does not necessarily reflect best value for each individual customer and their requirements.

- d) **[CONFIDENTIAL]**

- e) **[CONFIDENTIAL]**

- f) **[CONFIDENTIAL]**.

- g) To reiterate the points raised in a) and f) if a customer has historically taken out a contract with a bundle of services and has indicated that they wish to continue on such a tariff then the best tariff advice should be provided on that basis.

SECTION 7: HOW THE END-OF-CONTRACT NOTIFICATION SHOULD BE SENT

Question 16: Do you agree with our proposed implementation on the timing of the end-of-contract notification?

TUK reiterates its concerns⁶ over the timing of ECNs and best tariff notifications and the impact that they may have on customers. [CONFIDENTIAL]

TUK also wishes to highlight the response to Question 25 below with regards to potential implementation periods.

Question 17: Do you agree with our proposed implementation regarding the form of the end-of-contract notification?

TUK welcomes the flexibility provided by the proposal regarding the methods of communicating the ECN and acknowledges that additional information can be provided by letter, email or via a link within a SMS to an online account, e.g. My O2. TUK notes that Ofcom recognises it is not practically possible for all the proposed content in the ECN (including best tariff advice), to be sent via SMS [CONFIDENTIAL]

Question 18: Do you agree with our proposals to ensure accessibility of the end-of-contract notification?

TUK is dedicated to ensuring that all our customers can access information in relation to the services they receive. TUK has an Access for You⁷ service which customers register for in order to allow TUK to recognise their individual needs and requirements.

[CONFIDENTIAL]

SECTION 8: ANNUAL BEST TARIFF NOTIFICATIONS

Question 19: Do you agree with our implementation proposal for annual best tariff notifications to be sent only to end-users who are outside of their fixed commitment period?

[CONFIDENTIAL] Under the ECN proposals, customers coming to the end of their MCP, would be aware that they were approaching the end of their MCP and would have been advised of their options at that juncture.

[CONFIDENTIAL] Best tariff advice should take into account the current needs of the customer. Where a customer is no longer in contract and has opted-out of marketing communications TUK questions the appropriateness of the ABTN and the appropriateness of TUK contacting them to properly assess their ongoing tariff requirements.

Question 20: Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of:

- a) the fact that they are not within a fixed commitment period for the relevant contract or contracts;
- b) the services which the provider currently provides under that contract or contracts;
- c) any applicable notice period(s);
- d) details of other contracts the end-user has with the provider;
- e) the monthly subscription price(s); and
- f) the options available.

[CONFIDENTIAL] whilst CPs must comply with the requirement to give business customers information about their options, there is no specific guidance on the way in which CPs are expected to provide such information to this category of customers. [CONFIDENTIAL]

Question 21: Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of the provider's best tariffs and with our draft guidance for subscribers on residential contracts that:

- a) providers should give residential consumers at least one and up to three best tariffs;

⁶ First Response pg.10 para.1.

⁷ <https://www.o2.co.uk/access-for-all/services-and-support>.

- b) the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c) one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d) one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e) one tariff can be the cheapest upgrade tariff;
- f) one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g) tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) has ended.

Please refer to the response for Question 15 above.

Question 22: Do you agree with our proposed implementation on the timing of the annual best tariff notification?

Please refer to the response to Question 16 above and Question 25 below.

Question 23: Do you agree with our proposal to implement the annual best tariff requirements by specifying that providers should combine the best tariff information in a single notification for those end-users who have two or more contracts outside of their fixed commitment period?

[CONFIDENTIAL]

Question 24: Do you agree with our implementation proposals regarding the form of the annual best tariff notification?

TUK agrees in principle to the proposals but its position remains that the communications to customers should be driven by customer preference first and foremost i.e. how the customer want us to communicate with them.

TUK reiterates the concerns raised in relation to GDPR infringement particularly where customers have opted out of marketing communications. Please refer to the comments in relation to Question 15 above.

If Ofcom takes the view that best tariff information is mandated for all customers then the required content of this information should be clarified. Alternatively, if Ofcom are only mandating best tariff information for customers who are opted-in to receive marketing information and that it is discretionary for customers who are not opted in, then, again Ofcom should be clear on its intentions. **[CONFIDENTIAL]**

SECTION 9: IMPLEMENTATION & MONITORING

Question 25: Do you agree with our implementation proposals for the timescale within which providers must comply with the end-of-contract and annual best tariff notification requirements?

[CONFIDENTIAL] Ofcom need to be mindful of other regulatory initiatives being implemented in 2019 e.g. the Auto-Switch Rules.

[CONFIDENTIAL]

Question 26: Do you agree with the way we plan to monitor the effectiveness and impact of end-of-contract and annual best tariff notifications?

TUK notes the four main monitoring proposals, namely; a) CPs to keep a record of each ECN and ABTN they send; b) requesting additional data from CPs as they roll-out their ECNs and ABTNs, to assess the impact on end-users; c) conduct on-going consumer research by focusing on engagement and satisfaction, where possible linked to the receipt of ECNs and ABTNs, and d) exploring the potential with providers to conduct a randomised control trial to assess the effectiveness of different formats of notifications.

[CONFIDENTIAL] If Ofcom is aware of any data that they propose to request from CPs it may be useful to advise CPs of this to provide Ofcom with advance notice of the availability of such data, or where system architecture needs to be changed, to try and incorporate any such data fields in the amendments.

SECTION 10 – REGULATORY IMPACT ASSESSMENT FOR INTRODUCING END-OF-CONTRACT NOTIFICATIONS

Question 27: Do you agree with the impacts from the introduction of end-of-contract notifications we identify in our assessment?

[CONFIDENTIAL]

TUK maintains that Ofcom is underestimating the potential costs likely to be incurred by the implementation of the requirements, also when taken in context of the amendments to incorporate other proposals, such as the Auto-Switch Rules.

SECTION 11: REGULATORY IMPACT ASSESSMENT FOR INTRODUCING ANNUAL BEST TARIFF NOTIFICATIONS

Question 28: Do you agree with the impacts from the introduction of annual best tariff notification we identify in our assessment?

Please see response to Question 27 above.

[CONFIDENTIAL]

SECTION 12: PROVISIONAL CONCLUSIONS

Question 29: Do you have any comments on the draft general conditions, set out in Annex A6?

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