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Ofcom  
Riverside House  
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1 February 2019

Dear Oliver,

### **Helping consumers get better deals**

#### **Consultation on end-of-contract and annual best tariff notifications**

TalkTalk welcomes the opportunity to comment on the above-captioned consultation document.

As we commented in response to Ofcom's earlier consultation last year, TalkTalk believes that UK communications markets are not working as well as they should be for consumers and that regulatory intervention is required to make the markets fairer for consumers. Ofcom has correctly identified one problem in UK communications markets in that too many customers are failing to switch providers to enjoy better offer. Consumers therefore end up incurring a so-called 'loyalty penalty' by paying higher out-of-contract prices. There is also a separate problem in that consumers are being penalised whilst in contract because of the widespread industry practice of frequent in-contract price increases.

TalkTalk has sought to address the above market failures in relation to its own customers. As Ofcom is aware, TalkTalk does already notify its customers when they are coming to the end of the term of their contract. TalkTalk also guarantees that the customer will not face any price increases during the contract term. TalkTalk believes that these measures make its commercial offers fairer for the consumer.

TalkTalk strongly supports Ofcom's revised proposals to introduce requirements to send end-of-contract and annual best tariff notifications to consumers. The proposals will bring communications markets in line with regulatory practice in other regulated markets to tackle the problem of customers paying an unfair loyalty penalty to their existing provider.

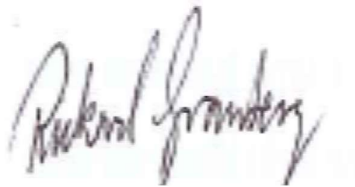
We have the following specific comments to make on Ofcom's proposals:

- (i) We welcome Ofcom's clarifications that the notifications must be sent separately to any other company communication and that the requirements would apply equally to pay-TV services based on a solid interpretation of current case-law and statutory wording.
- (ii) The proposed implementation period of six months is reasonable and should be achievable by providers.
- (iii) We believe that the obligations should apply at a provider's company group level and that a provider should be required to include in their notification the best price from any company brand. This is an important issue as some providers have chosen to launch budget brands alongside their legacy premium brands. The services offered by the budget brands tend to be similar if not identical to the premium brands but obviously offered at a reduced price. To increase consumer transparency and stimulate switching, such providers should be required to include the budget brand best price also in their notifications to premium brand customers. Otherwise, we are concerned that a provider might effectively be able to avoid complying with the new requirements by launching (further) budget brands.
- (iv) We are concerned that the proposed 10-40 day window to send notifications is inappropriate for two reasons. Our experience of sending end-of-contract notifications suggests that customers value a slightly longer time period of up to 90 days to consider their options. There is a risk that customers who receive a notification only 10 days before the end of their contract might not have sufficient time to make an informed decision and therefore could end up paying a higher out-of-contract price by mistake (particularly to providers for whom the price difference between in-contract and out-of-contract can be significant). To address these two issues, we would suggest a notification window of 30-90 days would be more appropriate.
- (v) Lastly, we note Ofcom's reasoning regarding a provider's concurrent obligations under data protection law not to send marketing communications to customers who have declined to receive them. We do not believe that any of the mandatory information in the notifications could reasonably be classified as marketing information. Ofcom make this clear in its final guidance (or work with the Information

Commissioner to produce some joint guidance). There would otherwise be a danger that an overzealous interpretation of data protection laws could undermine the effectiveness or impact of Ofcom's proposals. It would be odd if a provider was able to argue that it could not send any (or much reduced) notifications to customers who had opted out of receiving marketing communications.

Please do not hesitate to contact me should you have any questions regarding the above comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Rickard Granberg". The signature is written in a cursive style with some loops and flourishes.

Rickard Granberg  
Head of Regulation and Compliance