



Consultation on helping consumers to get better deals in communications markets: mobile handsets

Virgin Media's response

16th September 2019

Non-Confidential response

Helping consumers to get better deals in communications markets: mobile handsets

Consultation Response

Virgin Media welcomes the opportunity to respond to Ofcom's "Consultation on helping consumers to get better deals in communication markets: mobile handsets" ("**the Consultation**").

Virgin Media acknowledges that customer fairness is a key priority for Ofcom. We support this aim. As a business, we consistently strive to ensure that our customers are not only treated fairly but are also given a number of options when it comes to how they chose the services they need - and we set out below some of the steps that we have already taken to achieve this customer fairness goal.

We generally support the proposals set out in the Consultation, however we have serious concerns about the defacto inclusion of business customers within the scope of certain of the new rules. We feel that it is important to make a clear distinction between consumer and business contracts where, whilst still treating both sets of customers fairly, an understanding of the differing needs of these clear and distinct groups is always at the forefront of any requirements. We have, therefore, separated our response to cover these two customer groupings independently.

Consumer Contracts

Virgin Media has already implemented a number of initiatives aimed at ensuring fairness for customers. For example, our 'Freestyle' tariffs separate a customers' airtime and handset costs. Not only does this give customers flexibility during their contract (they can change the airtime tariff each month if desired); it also means that at the end of the handset contract period the customer has piece of mind that they will, going forward, only pay for their airtime costs. This is also something that we are now providing moving forward to our 'combi' customers, ensuring that they automatically move to a SIM-only tariff at the end of their fixed commitment period. Over recent months, Virgin Media has also committed to taking steps, in line with Ofcom recommendations, to move all of our existing out of contract mobile customers to the equivalent 30-day SIM-only deal in order to ensure that they are on the most appropriate and fair deal for their needs. We believe that these commitments clearly demonstrate that consumer fairness is vital to how we conduct our business and ensures that whichever type of mobile contract a consumer wishes to take with us, be that SIM-only, Freestyle or the traditional style contract, they will always receive a fair deal even if they do not actively engage with us when they reach the end of their minimum term.

As mentioned above, Virgin Media believes that the introduction of 'split contracts' (what we would term as our 'Freestyle' product) provides customers with increased choice and flexibility when it comes to choosing the best option for them. These contracts are particularly used for the latest, high end handsets and come with the flexibility to change the airtime element as and when it suits the customers' needs. We believe that the existence of these contracts delivers choice and benefits for consumers. However, we also acknowledge that, if not managed correctly, some of these contracts can present a barrier to switching and can also be used potentially to circumnavigate the expressed 24 month maximum contract length for consumers. In relation to our own product offering, Virgin Media offers the separate handset element of the agreement at lengths of both 24 and 36 months, something which would continue to be available and compliant with any change in regulations that may arise from the Consultation. However, Virgin Media has already addressed the

concerns raised by Ofcom in the Consultation by ensuring that all of our airtime and handset agreements, be that of 24 or 36 months in length, are “**wholly independent of one another**” (and are regulated by the FCA as financial products, not communications services). This means that if a Virgin Media Freestyle customer wishes to switch airtime provider, they are free to do so without being subject to the requirement to pay-off the remainder of their handset liability in one go. This customer would simply cease to have an airtime agreement with Virgin Media and continue to pay the regular monthly payments as part of the separate handset agreement.

Therefore, in relation to consumers, Virgin Media is broadly supportive of Ofcom’s desire to introduce regulation that ensures that consumers cannot be inadvertently locked into contracts that would essentially exceed the 24 month period stipulated within the General Conditions.

Business Contracts

As with consumer contracts, Virgin Media recognises the importance of treating business customers fairly and ensuring that they have the flexibility to meet their needs. However, we believe that it is vital that we, and Ofcom, recognise the differences between these two types of customer and that Ofcom avoids introducing blanket regulation that does not take such differences into consideration.

Virgin Media is concerned that Ofcom proposes that the requirement for bundled and linked contracts to be no longer than 24 months in duration should extend in effect to small businesses (given the proposed change to the General Condition and the intended application of Article 105 of the European Electronic Communications Code (“EECC”) to small enterprises and the definition thereof). Although we do not currently offer ‘Freestyle’ type products to our business customers, we do offer the traditional style, combined handset and airtime mobile product. We believe that the proposed inclusion of small business customers within the prohibition of contracts in excess of 24 months does not adequately reflect the realities of the business market, where contracts in excess of 24 months are commonplace, or indeed the needs and preferences of business customers. As such, it will lead to disruption/distortion of the market, a reduction in choice and, ultimately, negative outcomes for customers.

We note that the relevant article(s) and definitions in the EECC could be interpreted as providing for an extension of the consumer rules to business customers, and that Ofcom has demonstrated a desire to introduce elements of the EECC that encourage customer fairness in advance of the transposition date. However, we believe that this particular element should not be introduced into UK regulation, at this time as there is currently no evidence that small business customers are suffering harm as a result of the current situation – and the extension of the rules/definitions as proposed is, in fact, very likely to lead to unintended outcomes and negative consequences for these customers. In order to avoid any potentially premature introduction of new definitions regarding the types of consumers covered by General Condition C4.1, Virgin Media believes that Ofcom should consider this in much greater detail as a part of the forthcoming consultation on the required amendments to the General Conditions as a result of the transposition of the EECC (and once it becomes clear how – or if - the UK intends to transpose the EECC).

Virgin Media believes that to introduce such piecemeal changes to definitions, such as those proposed within the Consultation, risks unnecessarily blurring the currently clearly defined lines

between business and consumer customers, likely leading to negative outcomes for the former in particular.

Consultation Question Responses

Please see below for our response to the specific questions in the Consultation.

Question 1: Do you agree that our implementation proposal for bringing the requirements of the EECC into effect is sufficient to address our concern that linked split contracts (and other split contracts falling within the definition of a bundle) are liable to deter switching?

In relation to consumers, Virgin Media believes that the proposal made in this Consultation is sufficient to address the concerns regarding linked contracts. However, as expressed in the main body of this response, we believe that this should only cover consumer contracts and should not extend to business customers, even in the reduced definition proposed.

Question 2: Do you agree that the draft General Condition (in Annex 6) would achieve our aim of limiting the minimum contract periods of the contracts we are concerned about to 24 months?

Virgin Media agrees that the introduction of the 'bundle' contract will achieve the aim desired. However, Virgin Media does not agree with the added definition (C1.4A (b)) that includes the introduction of business customers.

Question 3: Do you agree with our implementation proposal that providers should have three months to make the necessary changes to their contracts and other relevant materials?

If the final proposals are to focus solely on consumer contracts, Virgin Media believes that three months is an acceptable period. However, if major system changes are required this may mean a longer period is needed. Notwithstanding our belief that the proposals should not include changes to the treatment of business customers, if Ofcom did proceed with this inclusion, it would very likely involve major disruption and so an implementation period of at least 6 months would be required.

Question 4: Do you have any comments on our impact assessment of our proposal to prohibit linked split contracts (and other split contracts falling within the definition of a bundle of over 24 months)?

Virgin Media does not have any comment at this time.

ⁱ See Ofcom 2019 *Helping Consumers get better deals in communication markets: mobile handsets* Paragraph 5.38