



Introduction

We request that our response to [this consultation](#) be considered alongside other publications, where relevant issues are discussed and proposals advanced:

ft [Fair pricing for mobile phones - handsets, connection and use](#)

ft [Response to consultation on \(end-of / out-of\) Contract Notifications](#)

The relevant points will be developed below, however these documents establish a context for them, and cover the wider issues referred to fully.

The “leasing” issue

An obvious remedy to achieve the “unbundling” of the purchase cost of the handset from the airtime element is for the lease-purchase of the handset to be treated for what it is. The contract for the handset should therefore be a commitment to make just a fixed number (perhaps 24) of monthly payments, at the end of which the handset is owned by the customer.

We are however aware that there are, apparently insurmountable, obstacles to this approach, due to relevant financial services regulations, which may be avoided if the price being paid includes some other service element.

It is regrettable that these issues are not discussed in the consultation document, as respondents are likely to propose this solution unaware of the detail of these objections.

For the record therefore, the **fair telecoms campaign** proposes that the purpose of a mobile handset (or indeed any other element of telecommunications hardware) through monthly payments should be undertaken as such.

If it is believed that the regulatory protections for those entering a lease-purchase agreement are too onerous and that they provide no proportionate benefit to consumers engaging in such an arrangement, then this deficiency in the relevant regulations should be fully explained.

If this is so, we understand that some other element of service needs to be included, in order to avoid the need to comply with this element of consumer protection.

If our understanding is correct, then we propose that connection to the network associated with the provider be that additional element. Whilst there is no explicit charge for this service at present, we believe that necessary transparency demands that this charge also be un-bundled.

We would envisage a commitment to take service from the provider in the same way that this is a condition of a direct cash purchase of a handset from a service provider.

The key point is that if the customer also wishes to purchase airtime (i.e. calls, texts and data) from the provider, then this is a separate transaction on separate terms. This may however be subject to a discount on the basis of the handset and connection agreement.

It is however vital that the reasons for the failure to propose this obvious solution to the issues raised are explained and discussed.

We trust that Ofcom will address this issue fully in its consultation response.





Answers to consultation questions

Question 1 – Do you agree with the concerns we have identified in relation to bundled mobile airtime and handset contracts?

It is important to note that the issue with transparency relates not only to the situation when the minimum term for a combined airtime and handset subscription ends.

We believe that whilst it is perfectly legitimate to offer a discount when multiple services are taken, this should not be an excuse for the inappropriate bundling of instalment payments (for a handset) with a rolling subscription (for airtime).

Total transparency is vital in this market, for two reasons:

1. To enable fair competition between service providers and handset vendors, including those who offer both.
2. To ensure that consumers are aware of what they are buying. This applies, with equal importance :
 - a. before they enter a contract
 - b. during the term of the contract (as switching is considered)
 - c. as the term of the contract draws to its close

The scandal of consumers over-paying for handsets is a total disgrace, which must be addressed. It is however only the most significant symptom of a wider problem.

Question 2 – Do you agree with the options we have outlined as potential remedies for the concerns identified?

No.

These only address a specific, albeit the most important, issue that arises from a lack of clarity and the inappropriate bundling of services.

When mobile telecoms was a totally new and innovative sector, total service provision - i.e. network connection, calling services and handset from a single provider, was tolerable as the norm. This may have been demanded by customers unsure of the new technology, and it was acceptable to permit a group of operators to develop their own services independently.

The sector has now matured and the technology has largely standardised. Furthermore, network connection and the facilities to achieve this are seen as an essential element of society. For this reason, amongst others, we see no reason for there to be four separate connection networks, however that is not the point at issue here.

The key issue is that the handset, the network connection and the “airtime” services should all be seen as separate items, charged for essentially independently.

That is not to preclude a discount being offered when multiple services are taken together, however discounting for multiple provision must never be used to obfuscate charges for provision of specific services in a competitive market.



**Question 3 – Do you have views on additional solutions we should consider, including on split contracts?**

The views expressed above, and in the related materials, represent total advocacy for the principle of unbundling. A principle acknowledged by Ofcom in other respects.

This principle should be the foundation for the operation of a competitive market in the range of services offered across the telecoms sector, to ensure transparency and open competition.

This is however not incompatible with discounting where multiple services are taken together. We have no objection to the presentation of a bundled deal, so long as the components and relevant charges are clearly identified. This cannot however run over into instalment payments for a handset being extended beyond the proper term, just because a discounted airtime deal may continue for longer.

It is vital that consumers are aware of the implications of accepting a long term commitment to a provider of whatever service. Likewise when providers accept such a commitment they must maintain the service which is contracted and the relevant terms throughout the duration.

“Switching” has a value in maintaining a competitive market, however many consumers value consistency and rewards for loyalty (even beyond the terms of a commitment), as opposed to rewarding a “switcher” for disloyalty to a former provider.

An obsession with “switching”, as if this were an essential component of a competitive market and an indicator of its success, represents an over-simplistic way of serving the interests of consumers. It is also seen to produce perverse effects.

Summary

The solutions proposed are nothing but a “sticking plaster” that seeks to address one consequence of a fundamentally improper practice.

Offering a discount when multiple services are taken from a provider is a perfectly acceptable way of operating, as this enables consumers to benefit from good deals.

Bundling services, so that the market in the respective component elements is opaque distorts that market.

Transparency and unbundling, given that the relevant market is now mature, should be the principles to guide the approach followed by Ofcom, in this area as with others.

It may be thought pragmatic to apply the “sticking plaster”, given the urgent need to address the issue of over-paying for handsets, pending a more thorough review.

If it is so determined, the **fair telecoms campaign** would not oppose such a move. We do however see it as essential that the principles of unbundling and transparency are established, even if action to enforce them may not be implemented immediately.

As ever, we will be happy to engage in further discussion of the points made in the text of this response, and as covered by the related materials.

