



## SKY'S RESPONSE TO OFCOM'S CONSULTATION - 'HELPING CONSUMERS TO GET BETTER DEALS IN COMMUNICATIONS MARKETS: MOBILE HANDSETS'

### EXECUTIVE SUMMARY

1. Sky welcomes the fact that, as part of its ongoing work on 'consumer engagement', Ofcom is focussing on bundled mobile handset payments in its consultation entitled 'Helping consumers to get better deals in communications markets: mobile handsets' published on 26 September 2018 ("Consultation")<sup>1</sup>.
2. This is a specific and significant consumer overpayment issue caused by the current practices of some of the largest mobile providers who choose to charge a combined price for the airtime and handset. It means, in effect, that some consumers continue to be charged for a handset they have effectively already paid for in full.
3. As explained in our responses to Ofcom's Call for Inputs on Consumer Engagement<sup>2</sup> and Consultation on End-of-Contract and Out-of-Contract Notifications<sup>3</sup>, Sky's view is that regulatory intervention is more likely to be warranted when there is a critical trigger for consumer engagement and it is obviously in the consumer's interests to engage at that point. Combined mobile airtime and handset payments are an example that clearly falls within this category. Sky therefore welcomes the fact that Ofcom has finally decided to focus its attention on this issue.
4. However, Sky has concerns regarding two specific aspects of Ofcom's proposals:
  - Any regulatory intervention should be specifically targeted at the harm Ofcom has identified and not inadvertently capture commercial practices that fall outside this; and
  - Auto-migrations to 'default tariffs' risk significant unintended consequences and consumer harms through bill shock as customers could lose features or allowances. Instead, Ofcom should implement simple rules that target the specific harm of consumers continuing to be charged for a handset they have already effectively paid for in full by ensuring providers automatically reduce the price payable by the customer at the end of the fixed term by an amount reflecting the handset payments (leaving the airtime subscription chosen by the customer unaffected).
5. This submission provides Sky's response to the Consultation on these two points.

<sup>1</sup> All references to paragraphs, figures, annexes and footnotes are to those in the Consultation unless stated otherwise.

<sup>2</sup> Paragraph 2.9, Sky's response to the Call for Inputs, September 2017: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/108437/Sky.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/108437/Sky.pdf)

<sup>3</sup> Paragraphs 1.28 - 1.30, Sky's response to Ofcom's consultation 'Helping consumers to engage in communications markets - Consultation on end-of-contract and out-of-contract notifications' (not yet published)

## SKY'S RESPONSE TO OFCOM'S CONSULTATION - 'HELPING CONSUMERS TO GET BETTER DEALS IN COMMUNICATIONS MARKETS: MOBILE HANDSETS'

### SECTION 1: REGULATORY INTERVENTION SHOULD BE SPECIFICALLY TARGETED

- 1.1 The Consultation inaccurately describes the different contract structures used in the mobile industry and if used as the basis for future proposed regulation would mean additional commercial practices, which do not give rise to the harm Ofcom has identified, would be impacted.
- 1.2 At paragraph 3.2 of the Consultation Ofcom explains that consumers can either receive a mobile handset as part of an airtime contract, or they can have separate contracts for the handset and airtime elements (split contracts). Ofcom then goes on to explain these structures further at paragraph 3.3, saying in particular:
- "Mobile handset as part of an airtime contract: the customer enters into one contract which combines the handset and airtime elements..."*
- "Separate contracts for the handset and airtime elements: the customer enters into one contract for the handset and one contract for the airtime."*
- 1.3 Sky considers this view is too simplistic. Whilst the first summary above might include the scenario that gives rise to a risk of customers continuing to pay for their handset after it has effectively been paid for in full, in some cases customers sign up to combined airtime and handset contracts where this risk does not arise. Similarly, it is not always the case that customers who have signed up to 'split (or separate) contracts' avoid this harm.
- For example, Sky Mobile customers purchase an airtime plan and handset at the same time and sign up to a combined airtime and handset contract without the risk identified by Ofcom arising. They may also separately enter into a regulated loan agreement in order to borrow the money to fund this purchase or purchase the handset without a loan at all in which case they still enter a combined airtime and handset contract but without any ongoing payments being required for the handset<sup>4</sup>. If the customer takes a loan their monthly payments are made up of a separate charge for their airtime subscription and handset loan repayment, which are shown separately on the bill, until the loan is fully repaid. At this point the handset loan repayments automatically cease and the customer continues to pay for their airtime subscription only.
- 1.4 Sky understands that Ofcom is concerned about combined airtime and handset charges, and less about the nature of the underlying contractual make-up. As the Sky Mobile example above helpfully illustrates, it is irrelevant whether a customer signs up to combined or separate airtime and handset contracts. Instead, it is the billing arrangements, and transparency given to these, that are most relevant.
- 1.5 Sky is concerned that if Ofcom uses the broad concepts of 'combined' vs 'split' contracts as the basis for future regulation in this context it will inadvertently impose unnecessary requirements on commercial arrangements that do not give rise to the harm of continuing to charge customers for a handset they have already paid for in full. Ofcom should therefore ensure any proposed new regulation is targeted appropriately.

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<sup>4</sup> The handset element of the combined contract is still needed to set out the supply and warranty terms.

## SECTION 2: AUTO-MIGRATIONS TO 'DEFAULT TARIFFS' GIVE RISE TO UNNECESSARY HARM AND ARE NOT A PROPORTIONATE REGULATORY INTERVENTION

- 2.1 Sky agrees it is unlikely to be appropriate that the default for customers paying a combined handset and airtime charge is to continue to pay this price even after their minimum contract period has ended (i.e. after the customer has paid for their handset in full).
- 2.2 Instead, Sky considers the most appropriate and proportionate regulatory intervention is to target the specific cause of the harm – namely, the continued charging for the handset – by requiring providers to automatically reduce the monthly price payable by the customer at the end of the fixed-term by an amount reflecting the handset payments, or introduce some other equivalent measure but without necessarily auto-migrating the customer to a default pre-selected tariff. This would ensure all consumers paying bundled charges stop paying for their handset once their minimum contract period has ended and avoid any impact, or unintended consequences, on their airtime services.
- 2.3 Ofcom would, in effect, achieve the outcome it proposes at paragraph 4.15 of the Consultation whereby customers are migrated automatically on to a 30 day SIM-only deal. Although the important distinction between Sky's proposal here and Ofcom's at paragraph 4.15 is that the customer's airtime services would remain unaffected (i.e. they are not migrated to another 'existing SIM-only deal' but instead retain the same airtime deal, with the same services and allowances, as before).
- 2.4 When customers sign up to an airtime subscription they select a specific product, with the benefits and features they consider most appropriate to their needs. Sky therefore has significant concerns with Ofcom's proposal<sup>5</sup> that providers would automatically place customers on a different, default, deal when their minimum contract period ends where the service features of that deal are different to those chosen (under the 'bundled contract') or the customer loses certain services. We do not consider it appropriate or proportionate for providers to automatically migrate customers to a deal that 'closest matches' the service features chosen as there will, by definition, be differences. If they were to do this, it would drive bill shock, dissatisfaction and a significant volume of complaints (both to the operator concerned and Ofcom).
- 2.5 If Ofcom is minded not to mandate the action a provider should take in order to avoid the harm it has identified, Sky would support Ofcom's proposal at paragraph 4.19 of the Consultation: avoid being prescriptive about the precise way that providers ensure a fairer default tariff, and instead set out the principles that would apply. This would give providers some flexibility to implement solutions that would best serve their customers and is similar to the approach taken by other sector regulators<sup>6</sup>.

Sky

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<sup>5</sup> See paragraph's 4.14 – 4.16 of the Consultation.

<sup>6</sup> Such as the Financial Conduct Authority.

**ANNEX 1: SKY'S RESPONSE TO THE CONSULTATION QUESTIONS**

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

Yes, although please refer to section 1 of this submission. Sky does not agree that the concerns Ofcom has identified arise from 'bundled mobile airtime and handset contracts'. Instead, Sky considers bundled charges to be the cause of the concern identified.

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

For the reasons set out in section 2 above, Sky does not agree that providers should be required to automatically migrate customers onto a default airtime tariff that 'closely matches' or is 'different' to the airtime tariff chosen by the customer.

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

No. Please refer to section 2 of this submission.