



# uSwitch response to Ofcom's consultation on helping consumers to get better deals in communications markets - mobile handsets

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**Contact**



# 1 Executive summary

## 1.1 About uSwitch

uSwitch is the UK's leading price comparison and switching service for home services, helping consumers to find a better deal and save money on their gas, electricity, broadband, mobiles, TV, landlines and personal finance products including mortgages, credit cards, current accounts and insurance.

uSwitch is part of ZPG, a digital media business that owns and operates some of the UK's most widely recognised and trusted online brands including Zoopla, PrimeLocation, Money.co.uk and Hometrack. Money.co.uk is one of the UK's leading financial services comparison websites, helping consumers compare products including mortgages, loans, credit cards, bank accounts and insurance from more than 600 providers.

uSwitch is a vocal champion of consumer issues and we are informed by our experience engaging directly with consumers on these matters. We are constantly looking for ways to innovate to ensure that our customers can navigate consumer markets effectively in the energy, telecoms and financial services sectors. We support any measures which recognise that competition is the best tool to deliver better outcomes for consumers. We look forward to continuing to engage with Ofcom on consumer issues.

## 1.2 Ofcom's consumer engagement programme is welcome

We welcome Ofcom's consultation on helping consumers to get better deals in communications markets, in particular on mobile handsets. uSwitch agrees with Ofcom that it can be problematic that customers on bundled handset and airtime contracts often continue to pay the same price after the end of the minimum contract period.

We are pleased that Ofcom has committed to a multi-phase programme of work to improve outcomes for consumers and we look forward to continuing to engage with Ofcom. uSwitch feels strongly that consumers must be equipped both with awareness of key information and the confidence to make the most of the strong offerings in the telecoms market.

### **1.3 The introduction of end-of-contract and out-of-contract notifications is a necessary first-step**

Our view remains that the introduction of end-of-contract and out-of-contract notifications should be Ofcom's priority as an essential first step to making the communications market fairer for consumers. In uSwitch's response to Ofcom's contract notifications consultation, we demonstrated that key additional elements in contract notifications that are sent at the right time could strengthen their effectiveness. We called for Ofcom to conduct its own quantitative research to ensure the best design.

We agree with Ofcom that additional information within end-of-contract notifications, proposed within its mobile handsets consultation, could be effective in improving consumer awareness of mobile handset payments. uSwitch believes that Ofcom should incorporate its proposed additional information into its quantitative testing of the effectiveness of all content for contract notifications. As such, as we remain clear that Ofcom should deliver its work on contract notifications to the timeline that it previously set out.

### **1.4 The second phase of Ofcom's work should build on the introduction of text-to-switch and contract notifications**

We consider that Ofcom should implement text-to-switch and contract notifications and then assess the extent to which any consumer harm remains. Only after Ofcom has an understanding of the success of other planned remedies can it realistically assess the suitability of further measures, including those relating to mobile handsets, in the second phase of its work.

In terms of measures to boost consumer awareness, uSwitch contends that Ofcom should then reflect on requiring out-of-contract notifications to be sent at regular intervals. After this, it could be appropriate for Ofcom to consider the viability of strengthening provider transparency at the point of sale and mid-contract, as well as other consumer information measures such as making mobile data consumption information easily available and understandable to consumers.

Also in the second phase of its work, Ofcom could then turn to further measures to boost consumer confidence through improving the ease of engaging and the perception of this. We believe that Ofcom would then be in a position to consider further practical measures that would allow easy cancellation, such as requiring that a customer must be able to cancel the way they joined.

## 1.5 There is considerable potential for further demand-side remedies

uSwitch believes that there is a considerable distance to go in improving consumers' abilities to engage in the communications market. We believe that it is vital that regulatory regimes aim to foster competitive markets that ultimately deliver the best outcomes for consumers. At this stage, therefore, it would be inappropriate to pursue broad pricing remedies that risk the unintended consequence of consumers losing out as competitive propositions are withdrawn from the market.

We do not agree that moving customers automatically onto default tariffs would be an appropriate remedy, either in isolation or in combination with greater transparency requirements. This measure could result in customers being automatically moved onto poor value deals and lead to worse overall deals available for all consumers. It also runs the risk of instilling a false sense of security whereby customers who are moved onto default tariffs believe they are on the best tariff available. We believe that the priority needs to be to take all reasonable steps towards ensuring consumers can take advantage of better deals.

In addition, we share Ofcom's view that mandating split contracts is not a sensible approach given the scale of likely unintended consequences. Split contracts are not the best value deals available to consumers and could also lead to reduced engagement as consumers are locked into longer contract periods. Instead, we believe that split contracts should form part of a range of transparent options for consumers. uSwitch sees healthy competition in the mobile market with a variety of different types of deals available to consumers. We believe that Ofcom should focus on improving consumers' abilities to take advantage of those deals which best suit them, and thereby improve consumer outcomes, rather than mandating that providers must offer a specific type of contract.

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## 3 Improving consumer outcomes

### 3.1 The consumer engagement work programme is crucial

We welcome Ofcom’s consultation on helping consumers to get better deals in communications markets, with a focus on mobile handsets. uSwitch shares the view that it can be problematic that customers on bundled handset and airtime contracts often continue to pay the same price after the end of their minimum contract period, and so effectively “double-pay” for their handset.

It is right that Ofcom has committed to a multi-phase programme of work to improve outcomes for consumers. Consumers need to be well-informed and able to take advantage of the wide range of choice that exists in the telecoms market. We agree with Ofcom that it is essential that consumers are empowered to shop around with confidence and secure the best deals for their needs. uSwitch looks forward to continuing to engage with Ofcom throughout its programme of work focused on consumer engagement.

### 3.2 Ofcom’s process

Within its consultation on mobile handsets, Ofcom indicated that it will consult on proposals in the new year, as well as report on the second phase of its consumer engagement work in the first half of 2019.

Ofcom has recently consulted on introducing end-of-contract and out-of-contract notifications for customers of communications services. In this consultation, Ofcom set out that this was the first phase of its work on improving consumer outcomes. Ofcom also indicated that it intends to publish a statement on contract notifications by March 2019, with end-of-contract and out-of-contract notifications implemented within six and nine months of Ofcom’s final statement, respectively.

We look forward to continuing to engage with Ofcom throughout this programme of work.

#### 3.2.1 The introduction of end-of-contract and out-of-contract notifications is an essential first step

uSwitch submitted a response to Ofcom’s consultation on the introduction of contract notifications in October 2018. Our view remains that the introduction of end-of-contract and out-of-contract notifications should be Ofcom’s priority as an essential first step to making the communications market fairer for consumers.

In our contract notifications response, we set out the strong case for sending end-of-contract notifications between 14 and 21 days before the contract end date in order to drive the best consumer response.

In addition, we demonstrated that carefully selected extra information within the notifications could boost the number of consumers likely to act beyond that achieved by Ofcom's proposed content. These additional elements were:

1. prescribed options message;
2. aggregated cost and projected cost; and
3. highest and average mobile data usage.

We called for Ofcom to conduct its own quantitative research to ensure the best design for the contract notifications. We are confident that this is achievable within the implementation timeline that Ofcom set out.

### **3.2.2 Relevant new proposals align with Ofcom's existing contract notifications implementation timeline**

In its mobile handsets consultation, Ofcom proposes the inclusion of additional information about handsets, the cost of different elements of a deal and the specific savings available with SIM-only deals within end-of-contract notifications. We agree with Ofcom that this is likely to be effective in improving consumer understanding of the issue of mobile handset payments.

We anticipate that this would be effective in enabling consumers to make informed decisions. This is because this is the key point at which consumers are at risk of unknowingly and unintentionally paying inflated prices as they roll out-of-contract, including by continuing to make handset payments which are not required.

uSwitch considers that Ofcom should incorporate its proposed additional information into its quantitative testing of the effectiveness of all content for contract notifications. As such, we remain clear that Ofcom should deliver its work on contract notifications to the timeline that has already been set out.

The importance of introducing end-of-contract and out-of-contract notifications should not be overlooked. This is a baseline measure which will bring communications in line with other sectors in terms of equipping consumers with the basic information they require to make the decisions that best suit them.

### 3.2.3 Further remedies should build on the introduction of text-to-switch and contract notifications

Additional measures to boost consumer outcomes should be considered separately, including those discussed in Ofcom’s mobile handset consultation that do not relate to the introduction of contract notifications. Further strands of the consumer engagement work programme should be assessed in proper detail and not cause delay to a remedy which could deliver real consumer benefit as early as Autumn 2019.

We consider that Ofcom should implement contract notifications and then assess the extent to which any consumer harm remains. Only after Ofcom has an understanding of the success of other planned remedies can it realistically assess the suitability of further measures, including those relating to mobile handsets, in the second phase of its work.

uSwitch contends that remedies seeking to boost consumer engagement can be considered as addressing two distinct experiences of consumers:

1. Consumer awareness - measures which increase the likelihood that a consumer will be able to engage because they know the details of their current detail and about the benefits of engagement;
2. Consumer confidence - measures which make it easier to engage, as well as which improve the confidence of consumers who previously had a distorted view of the hassle involved.

Remedies to boost consumer awareness	Remedies to boost consumer confidence
1. Introduce end-of-contract and out-of-contract notifications	1. Assess the impact of text-to-switch
2. Assess the impact of contract notifications	2. Consider further measures to improve the ease of engagement and cancellation e.g. cancel the way you join
3. Consider requiring regular out-of-contract notifications	
4. Consider greater transparency at the point of sale and mid-contract	
5. Consider further consumer information measures e.g. mobile data usage	



In terms of measures to boost consumer awareness, we believe that Ofcom's proposed introduction of end-of-contract and out-of-contract notifications is a crucial first-step to ensuring consumers receive information at the right time that enables them to act. We consider that Ofcom should then assess the impact of contract notifications and then reflect on requiring out-of-contract notifications to be sent at regular intervals. After this, uSwitch believes that it would be appropriate for Ofcom to consider the viability of strengthening provider transparency at the point of sale and mid-contract, as well as other consumer information measures such as making mobile data consumption easily available and understandable to consumers.

In terms of measures to boost consumer confidence through improving the ease of engaging and the perception of this, we contend that Ofcom should first assess the impact of the introduction of text-to-switch in July 2019. If Ofcom identifies remaining consumer harm in this regard, we believe that Ofcom should consider further practical measures that would improve consumer confidence around engaging. This could include other measures allowing easy cancellation, such as enabling a customer to cancel the way they joined.

We discuss these measures in greater detail below in response to questions 1 and 2.

## 4 Response to specific questions

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

We agree there are circumstances where current arrangements related to bundled mobile airtime and handset contracts can cause consumer harm.

We see that consumers can experience harm when they are not aware that they will unnecessarily continue to pay for their mobile handset if they do not act at the end of their bundled contract's minimum term.

uSwitch agrees with Ofcom that mobile airtime and handsets should be sold in a way that is fair and that allows customers to identify and make an informed choice above the goods and services offered to them.

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

As a strong consumer advocate, uSwitch agrees with Ofcom on the value of greater transparency for consumers. It is right that consumers should be told the different costs for each part of their deal including the handset, airtime and any other services, as well as informed of specific SIM-only deals they could move to and the savings available. We contend that Ofcom's first priority should be delivering this at the end of contracts and as a one-off to customers who are out-of-contract. This is the point at which an effective call-to-action can be achieved to address the concerns identified by Ofcom.

We do not agree that moving customers automatically onto default tariffs would be an appropriate remedy, either in isolation or in combination with greater transparency, given the significant potential for unintended consequences that could leave consumers worse off.

We set out the case for both of these positions in further detail below.

#### 4.1 There is a long way to go before demand-side remedies are exhausted

uSwitch believes that there is considerable potential to boost consumer engagement in the communications market. While we are clear that switching in and of itself is not the sought outcome, it is a necessary mechanism to drive competition between providers, ultimately delivering innovative offerings and lower prices to the benefit of the consumer. We believe that it is vital that regulatory regimes aim to foster competitive consumer markets.

We consider that all sector regulators have significant progress to make before exhausting the potential of well-designed demand-side remedies, as was recently highlighted by the UK Competition Network (UKCN).<sup>1</sup>

At this stage, therefore, it would be inappropriate to pursue broad pricing remedies that risk the unintended consequence of consumers losing out as competitive propositions are potentially withdrawn from the market. Indeed, the introduction of contract notifications remains an essential first step to giving consumers access to key information at the right time in order that they can make an informed decision.

We note that the mobile market is competitive given the wide range of good options available to consumers, including bundled contracts, split contracts, deals via resellers, SIM-only deals and the pairing of SIM-free handsets with SIM-only deals. We consider that Ofcom should seek to preserve the competitive nature of the mobile market. Remedies should be focused on making it more likely that consumers take advantage of the choice available to them. We caution against measures that are likely to cause unintended consequences that drive down competitive pressures, such as reduced consumer engagement, and ultimately worsen consumer outcomes.

As such, we hold that it is right that consumers should be able to access a reward for engaging in the communications market, for example in the form of lower pricing, better quality of service and innovative service offerings.

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<sup>1</sup> UK Competition Network, 2018. Helping people get a better deal: Learning lessons about consumer facing remedies.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744521/UKCN\\_consumer\\_remedies\\_project\\_-\\_lessons\\_learned\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744521/UKCN_consumer_remedies_project_-_lessons_learned_report.pdf)

## 4.2 uSwitch supports measures requiring greater transparency

As a strong consumer advocate, uSwitch supports requirements around greater transparency. It is right that consumers should be told the different costs for each part of their deal including the handset, airtime and any other services, as well as informed of specific SIM-only deals they could move to and the savings available. However, we contend that Ofcom's priority should be delivering this at the end of contracts and as a one-off to customers who are out-of-contract. This is because this is the point at which an effective call-to-action can be delivered.

### 4.2.1 New transparency proposals should be incorporated within Ofcom's existing end-of-contract notifications implementation timeline

As set out in section 3, uSwitch considers that Ofcom should incorporate its proposed additional information into its quantitative testing of the effectiveness of all content for contract notifications. This will ensure that contract notifications are designed with a strong evidence base that indicates they will be as effective as possible. We remain clear that Ofcom should deliver its work on contract notifications to the timeline that has already been set out.

### 4.2.2 Measures which deliver a call-to-action should remain the priority

The primary point at which to address the potential harm incurred by those on a bundled handset and airtime contract, or indeed any type of contract with an automatic price rise at the end, is at the end of the contract and for customers who are already out-of-contract. The focus on introducing new measures should be at this point in order to effectively deliver a call-to-action to consumers.

uSwitch supports transparency measures which enable consumers to make informed choices. On our own site, we led with functionality to clearly set out the constituent parts of total cost of handset ownership calculations for consumers.

While the concept of greater transparency measures at the point of sale and during the minimum contract term is generally welcome, they will not deliver an explicit call-to-action that will boost consumer engagement. We would need to see more detailed proposals to give a firm view on the introduction of transparency measures at the point of sale and mid-contract.

Instead, it is essential that Ofcom introduces effective and timely end-of-contract and out-of-contract notifications as soon as possible. We anticipate that this measure, alongside system improvements like text-to-switch in July 2019, will have a much more significant impact than broader transparency requirements.

In particular, out-of-contract notifications are likely to be especially crucial in offering information and confidence for those consumers with a lack of understanding of their handset costs. Effective contract notifications that make out-of-contract costs clear and explain how to shop around at the right time deliver the additional benefit of incentivising providers to compete to offer attractive deals to consumers, as well as to avoid over-inflated out-of-contract pricing. It is vital that Ofcom uses lessons learnt from other sector regulators to ensure that contract notifications are delivered in the best way for consumers.

### **4.3 Automatic moves to default tariffs could leave all consumers worse off**

We do not agree that moving customers automatically onto default tariffs would be an appropriate remedy, either in isolation or in combination with greater transparency requirements. This is due to the significant potential for unintended consequences that would leave consumers worse off.

As set out above, we believe that the priority first needs to be to take all reasonable steps towards ensuring consumers can take advantage of better deals. Consequently, we do not agree that it would be appropriate to take more interventionist approaches at this stage.

As Ofcom acknowledges, requiring providers to automatically move customers to fairer default tariffs at the end of their bundled contract could result in worse overall deals available for all consumers. In particular, there is strong provision of competitive SIM-only deals in the mobile market. We believe that it is essential that Ofcom avoids measures which risk undermining this positive feature of the market. uSwitch contends that it is not fair for all consumers to lose out due to an issue impacting only some customers who are overpaying for handsets. Instead, more targeted measures should be used to address the concerns identified by Ofcom in relation to mobile handsets.

Additionally, we are concerned that moving customers automatically onto default tariffs could instill a false sense of security whereby customers believe they are on the best tariff available. In reality, the customer would be moved onto a tariff that most closely resembled the airtime services and costs of their previous bundled contract. During the course of the previous bundled contract, downward pressure is highly likely to have been exerted on the cost of airtime, and particularly on data, meaning that the deal no longer represents good value for money. The new default tariff is also likely to be variable, meaning that the customer's cost and services could change at any time.

Furthermore, a customer automatically moved to a default tariff is likely to lose out on additional benefits or subscription services linked to traditional bundled contracts, such as BT Sport and Spotify. The proposition offered to consumers via default tariffs would be considerably poorer than could be accessed by engaging with the market.

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

We contend that Ofcom's next phase of work within its consumer engagement programme should consider bolstering the use of out-of-contract notifications based on learnings from the initial implementation of contract notifications. It should also consider further measures that boost consumer knowledge and confidence, such as understanding mobile data usage and further improving switching processes.

We share Ofcom's view that mandating split contracts is not a sensible approach given the scale of likely unintended consequences.

The case for each of these positions is set out in more detail below.

#### **4.4 Ofcom's next phase of work should strengthen consumers' ability to engage**

As discussed in section 3, we believe that there is considerable potential to introduce measures that would improve consumers' ability to take advantage of good deals in the mobile market.

These remedies can be grouped into those which seek to boost consumer engagement by addressing two distinct experiences of consumers:

1. Consumer awareness - measures which increase the likelihood that a consumer will be able to engage because they know the details of their current contract and about the benefits of engagement;
2. Consumer confidence - measures which make it easier to engage, as well as which improve the confidence of consumer who previously had a distorted view of the hassle involved.

Ofcom should focus the next phase of its consumer engagement work on taking learnings from the implementation of end-of-contract and out-of-contract notifications to encourage more consumers to engage in the market.

#### 4.4.1 Learnings from other sectors: regular out-of-contract notifications

Following the first phase of Ofcom's consumer engagement work and the successful implementation of end-of-contract and one-off out-of-contract notifications, we believe that Ofcom would be well-positioned to assess how out-of-contract notifications could be bolstered.

We consider that Ofcom's existing proposal for one-off out-of-contract notifications are likely to be vital in offering information and confidence for those consumers with a lack of understanding of their true tariff costs. The direction of travel in the mobile market towards pairing handset purchasing with a SIM-only deal, as well as other types of deal, is having the effect of eroding the prevalence of traditional handset bundles.

Effective contract notifications that make out-of-contract costs clear and explain how to shop around at the right time deliver the additional benefit of incentivising providers to compete to offer attractive deals to consumers, as well as to avoid over-inflating out-of-contract pricing.

As a result, we believe that regular out-of-contract notifications could be highly effective in addressing the issue of consumers unintentionally double-paying for their handset. While it is beyond the scope of Ofcom's current work, uSwitch contends that this should be the next focus of Ofcom's programme.

Once the one-off notification is introduced, Ofcom should assess the effectiveness of the measure and consider whether to strengthen its own requirements. For example, this could include requiring a provider to send an out-of-contract customer a notification at a regular interval, such as every year.

The FCA requires that insurance firms send notifications to customers on their fourth or subsequent renewal.<sup>2</sup> Ofgem has recently consulted on its proposed principles for supplier-customer communications, which includes a requirement that energy customers must be notified of their estimated annual costs and a message about the cheapest tariff available to them at least once a year.<sup>3</sup> We believe that the latter is an example of best practice.

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<sup>2</sup> FCA. Handbook ICOBS 6.5 Renewals, clause 6.5.1(4).

<https://www.handbook.fca.org.uk/handbook/ICOBS/6/5.html?date=2018-10-01&timeline=True>

<sup>3</sup> Ofgem, 2018. Statutory consultation: Domestic supplier-customer communications rulebook reforms.

<https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-domestic-supplier-customer-communications-rulebook-reforms>

At present, consumers of communications services have never received end-of-contract or out-of-contract notifications. We believe that it is reasonable to expect that yearly out-of-contract notifications might be required to bring about the step-change that Ofcom seeks in both industry practices and consumer behaviour.

#### **4.4.2 Further measures should boost consumer awareness and confidence**

We believe that it is essential that Ofcom takes all possible steps towards improving both consumer awareness and confidence so that they have the ability to take advantage of the best deals available. Consumers who do not currently engage in the market are held back because they are uncertain of both their mobile requirements and their ability to access a better deal.

Ofcom should consider remedies which improve consumer awareness of their current mobile deals and their own needs. This could be delivered by requiring providers to make a customer's data usage easier to see, as well as to provide clear explanation of the meaning of units of data (for example how much data is used for certain activities).

In addition, Ofcom should assess the impact of text-to-switch following its introduction and consider measures that boost consumer confidence by improving the ease of engagement and the perceived hassle of doing so. This could include requiring providers to allow customers to cancel the way they purchased their mobile services. Consumers should be able to cancel online, without being required to jump through unnecessary hoops such as speaking to a customer representative over the phone.

#### **4.5 uSwitch shares Ofcom's view that split contracts should form part of a range of transparent options for consumers**

We agree with Ofcom that split contracts should form part of a range of transparent options for consumers. uSwitch sees healthy competition in the mobile market with a variety of different types of deals available to consumers. We believe that Ofcom should focus on improving consumers' abilities to take advantage of those deals which best suit them, and thereby boost consumer outcomes, rather than mandating that providers must offer a specific type of contract.

uSwitch welcomes the steps being taken by providers to bring greater transparency to the contracts offered to consumers by way of providing separate contracts for handsets and airtime. We look forward to continuing to work with providers as they develop their split contract offerings in order to facilitate



effective comparison for consumers both between them and with other contract types.

However, to require providers to exclusively offer handsets via split contracts would not deliver the optimal consumer outcome. Split contracts do not necessarily represent the best value deals available to consumers and could mislead those who would otherwise shop around across different deal types. Indeed, uSwitch research found that providers charge up to 38% extra for split contracts, meaning that consumers could end up paying £231 million more than they should on the airtime part of the deal alone.<sup>4</sup>

Moreover, requiring the provision of split contracts risks unintended consequences as greater constraints are put on providers' activities. This could lead to reduced innovation and a withdrawal of attractive offers in the market. It is also likely that providers would specifically seek to move the cost of handsets onto airtime costs, meaning that consumers end up worse off over time.

In addition, while airtime contracts are limited by Ofcom to twenty-four months in length, handset contracts can exceed this. We believe that a significant shift towards split contracts could lead to more consumers locked into long contracts which would reduce a consumer's ability to engage and reduce pressure on providers to offer competitive deals.

Even as consumers do reach the end of the handset element of a split contract, we are concerned that the lack of a call-to-action could lead to suboptimal levels of engagement. There exists a loophole in Ofcom's contract notifications proposals that means providers will not be required to send split contract customers an end-of-contract notification. Providers could structure the airtime element of the contract with an initial contract period of less than six months, given the longer handset consumer credit contract will act as a stronger constraint on the consumer. Indeed, split contracts often contain a rolling monthly airtime contract.

We believe that Ofcom should close this loophole by requiring providers to send a quasi-end-of-contract notification to split contract-holders with respect to the airtime element covered by the General Conditions. This should be sent at the point that the customer reaches the end of their handset contract and would serve as a reminder for the customer to look into their options for their airtime deal.

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<sup>4</sup> uSwitch, 2018. New breed of mobile tariff could cost customers £231 million.  
<https://www.uswitch.com/media-centre/2018/07/new-breed-mobile-tariff-cost-customers-231-million/>