

TELEFÓNICA UK LIMITED RESPONSE TO:

**REVIEW OF THE GENERAL CONDITIONS OF ENTITLEMENT – Consultation on the
general conditions relating to consumer protection**

Ofcom Consultation

March 2017

TELEFÓNICA UK LIMITED RESPONSE TO OFCOM'S CONSULTATION: REVIEW OF THE GENERAL CONDITIONS OF ENTITLEMENT (CONSUMER PROTECTION)

I. INTRODUCTION

1. Telefónica UK Limited ("Telefonica") welcomes the opportunity to respond to Ofcom's consultation on its Review of the General Conditions of Entitlement – Consumer Protection (the Consultation)¹².
2. Telefonica is a leading digital communications company with the highest customer satisfaction for any mobile provider according to Ofcom³. With over 25 million customers, Telefonica runs 2G, 3G and 4G networks across the UK, as well as operating O2 Wifi and owning half of Tesco Mobile. Telefonica has over 450 retail stores and sponsors The O2, O2 Academy venues and England Rugby. Read more about us at o2.co.uk/news⁴.
3. Telefonica has consistently delivered the highest customer service satisfaction for any mobile provider according to Ofcom. With insight informed from serving over 25 million customers, we trust that our response assists Ofcom in its review of the General Conditions (GCs).

¹ <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions-relating-to-consumer-protection>

² O2 is the commercial brand of Telefónica UK Limited.

³ <http://www.o2.co.uk/termsandconditions/other-products-and-services/customer-service-surveys>

⁴ <http://news.o2.co.uk/>

II. EXECUTIVE SUMMARY

We welcome Ofcom's Consultation

4. We agree with Ofcom that it is important that the GCs are fit for purpose - in relation to policy, clarity and user-friendliness⁵⁶.

Ofcom's main proposals

5. We note that Ofcom takes the “*opportunity to streamline and consolidate drafting that has built up by a process of accretion over a decade or more.*” [para 2.14]. This results in a significant volume of changes⁷.
6. For brevity, in this response we restrict our comments to Ofcom's main proposals which seek to do the following⁸:
 - i. specify Ofcom's approach to price rises in the general condition (GC9) itself and withdraw Ofcom's Guidance on how Ofcom is likely to apply the rule on material detriment in relation to price increases;

⁵ “*The aim of this review is to ensure that the General Conditions remain fit for purpose in today's market and are aligned to our current policy priorities. We are seeking to make the rules clearer and more practical, remove any redundant rules, and make compliance simpler. This should also make it easier for us to enforce the rules in the interests of citizens and consumers.*” [About this Document]

⁶ We welcome Ofcom's intent to produce a more coherent set of conditions which are easier to follow. For example, including short recitals to each GC before each condition.

⁷ See Ofcom's Summary table of the proposed changes running to some 10 pages [Section 13],

⁸ “*We began our review of the consumer protection conditions by asking ourselves what our main policy priorities for consumer protection were. We considered this in terms of identifying the current areas of greatest potential harm to consumers, in light of our recent enforcement activities, complaints data, and wider Ofcom strategy. We then considered whether a general condition is the right route to tackle the problem, including whether it is enforceable; actively considering opportunities for deregulation; and looking to simplify and improve the clarity of the rules*”. [para 2.10]

- ii. significantly strengthen the rules on complaints handling to ensure that Communications Providers (CPs) deal with complaints from consumers promptly and effectively;
- iii. introduce a new obligation requiring CPs to establish policies to ensure they take account of the needs of all vulnerable consumers;
- iv. extend the current rules on the provision of calling line identification (“CLI”) facilities to improve the accuracy and availability of the CLI data presented to call recipients and to require the blocking of calls with invalid CLI; and
- v. extend certain conditions which currently apply only to call services to other forms of electronic communications services, in particular the provisions on billing requirements and measures to meet the needs of end-users with disabilities as well as proposing to extend the Ofcom Metering and Billing Scheme to data.

Telefonica’s recommendations

7. Overall, there are three main areas where we believe Ofcom must change its approach⁹. In summary, these are:

Ofcom must revise its proposals to amend GC9.6 and 9.7 to reflect Ofcom’s stated policy.

8. Ofcom’s proposed amendments do not accurately reflect Ofcom’s policy. Our response below explains our position in more detail and includes suggested amendments to Ofcom’s drafting which are designed to ensure that GC 9.7 accords with Ofcom’s stated position that the revised condition is intended to reflect its existing policy currently set out in guidance. (para 4.20 of the Consultation).

⁹ And generally, we note that in seeking to “bake in” Ofcom’s current policy priorities into the face of the General Conditions Ofcom risks micro-managing markets and the GCs becoming less flexible and less responsive to change. In a number of areas, for example CLI, Debt Management and Vulnerable Consumers, we believe Ofcom is premature in moving to a prescriptive intervention based on detailed General Conditions.

Ofcom must engage in deeper consultation with industry before action regarding the proposals to extend the scope of the GCs to vulnerable customers and CLI measures

9. We recommend greater consultation with industry before deciding whether it is appropriate to mandate measures in the GCs regarding vulnerable consumers, CLI and debt management. In particular, Ofcom must consider these interventions in accordance with Ofcom's own Better Policy Making principles.¹⁰
10. It is important that Ofcom undertakes a robust Impact Assessment in accordance with its Better Policy Making principles to determine the right approach in accordance with its duties.

A more realistic implementation period to make changes is required (in consultation with industry)

11. We welcome Ofcom's recognition that CPs will require a transitional period to bring any new policies and practices into line with the revised regulatory requirements. However, we believe that Ofcom underestimates the transitional period necessary. We anticipate that implementing business change in response to a widespread overhaul of the GCs which, as Ofcom recognises, have built up over a decade or more, is likely to be a significant programme. The changes will require work to identify, review and update policies, procedures and training materials. A period of staff familiarisation will also be necessary. Our initial view is that a minimum period of 9 - 12 months is likely to be more appropriate than the 3-6 months Ofcom suggests.
12. Moreover, we would anticipate a minimum of 12-18 months is likely to be required for the inclusion of data within the Metering and Billing Scheme and any significant IT system changes.

¹⁰ *The decisions which Ofcom makes can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate. If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition. These guidelines explain how Impact Assessments will be used to help us apply these principles in a transparent and justifiable way. Para 1.1 Better Policy Making, Ofcom's approach to Impact Assessment https://www.ofcom.org.uk/data/assets/pdf_file/0026/57194/better_policy_making.pdf*

General

13. We trust our response assists Ofcom ensure that its proposals deliver the right regulatory regime in view of Ofcom's duties.

III TELEFONICA RESPONSE

Ofcom's main proposals

14. In this section, we respond to Ofcom's main proposals as summarised earlier.

Contract Requirements¹¹ - Ofcom proposes to specify Ofcom's approach to price rises in the general condition (GC9) itself and withdraw Ofcom's Guidance on how Ofcom is likely to apply the rule on material detriment in relation to price increases

Proposed amendments to the General Conditions (GCs) in relation to Contractual Changes

15. Telefonica welcomes Ofcom's confirmation that it intends to maintain its current policy in regard to contractual price modifications. However, its proposed new GC 9.7 does not reflect that policy. If implemented it would introduce substantial and unwarranted changes. [REDACTED]

16. Telefonica has accordingly proposed alternative drafting which reflects the current January 2014 Guidance (the "**Guidance**") on the application of GC 9.6 which sets out Ofcom's policy position.

17. As part of our review of the Consultation, Telefonica has noted that Ofcom proposes to amend the GCs in relation to contractual changes by adding a new GC 9.7 as follows:

¹¹ Section 4 of the Ofcom Consultation

"In relation to changes to contractual prices:

- a) any increase to the sum that the Subscriber must pay to the Regulated Provider at monthly or other regular intervals under the contract; and/or*
- b) the exercise at the discretion of the Regulated Provider of any contractual term or condition which would have the effect of increasing the sum that the Subscriber must pay to the Regulated Provider at monthly or other regular intervals under the contract shall be deemed as likely to be of material detriment to a Subscriber for the purposes of paragraph C1.6(a)."*

18. GC 9.6 provides that CPs must give their subscribers a minimum of one month's notice of any modifications likely to be of material detriment to the subscriber and inform them of their right to terminate the contract without notice if the modification is not accepted.
19. The Guidance sets out "what Ofcom is likely to regard as price increases meeting the "material detriment" requirement and giving rise to the rights to notice and to terminate the relevant contract without penalty". It includes a number of examples of what would and would not be likely to be considered a price increase which gives rise to a modification. For example, Ofcom notes that price increases in line with Examples 2 and 3 in paragraph A1.14 in the Guidance would not constitute "a modification of the contract capable of meeting GC 9.6's material detriment requirement"¹².
20. We also note that the Guidance is limited to price increases which affect the core subscription price within a fixed term of a contract entered into by Consumers and Small Business Customers¹³¹⁴.
21. Telefonica has relied upon this Guidance in formulating [REDACTED] [REDACTED] the contractual offerings it makes to both consumers and business.

Ofcom's commitment to current policy

¹² See para A1.14 of the Guidance:
https://www.ofcom.org.uk/__data/assets/pdf_file/0027/29682/guidance.pdf

¹³ See footnote 3 of the Guidance

¹⁴ See para A1.3 of the Guidance

22. Ofcom is clear in the Consultation: it is not changing its current policy regarding mid contract price rises as detailed in the Guidance.
23. In its introduction to its review of GC 9, Ofcom states that it is “*not proposing any significant policy changes in this area*”¹⁵ and that its “*provisional view is that the overall policy objective underlying the current condition remains important, and the specific protections which are afforded to consumers by the current condition remain fit-for-purpose to achieve that policy objective. Therefore, we propose to retain all the current requirements without any significant policy changes*”¹⁶.
24. Ofcom states that it is adding a new GC 9.7 to “*clarify the drafting of the condition by specifying how this obligation applies to price rises in the condition itself*”. As a consequence, Ofcom considers that the Guidance would become “redundant” and Ofcom propose to withdraw it¹⁷.
25. Ofcom adds that it considers that “*the revised condition [GC 9.7] would reflect our existing policy currently set out in guidance. As we are not proposing any change to our existing policy towards mid contract prices rises, we do not envisage that our proposals would give rise to any additional burdens on CPs*”¹⁸. (emphasis added) As shall be explained below, Ofcom’s proposed new GC 9.7 would in fact impose substantial burdens on CPs.

26. [REDACTED]

The proposed new GC 9.7 and its relationship to current policy

27. Telefonica welcomes Ofcom’s commitment to its current policy on mid contract price rises as articulated in the Guidance.

¹⁵ Para 4.3 of the Consultation

¹⁶ Para 4.6 of the Consultation

¹⁷ Para 4.17 of the Consultation

¹⁸ Para 4.20 of the Consultation

28. However, notwithstanding Ofcom's assertions, Ofcom's proposed new GC 9.7 does not reflect the "existing policy currently set out in guidance". Instead it extends applicability of the approach to material detriment beyond the parameters of current policy contrary to Ofcom's stated position.
29. Telefonica explains its position in more detail below by reference to tiered pricing, core subscription price, fixed term of the contract and the extension of the applicability of the policy to all Subscribers.

Tiered pricing

30. As stated above, the Guidance details certain kinds of pre agreed price changes (e.g. by reference to RPI) which would not be considered to be a modification; this is referred to as tiered pricing in the Guidance. However, the new proposed GC 9.7(a) states that:

"any increase to the sum that the Subscriber must pay to the Regulated Provider at monthly or other regular intervals under the contract [...] shall be deemed as likely to be of material detriment". (emphasis added)

31. Telefonica notes that there is consequently no clear carve out from GC 9.7 for price increases which take place as a result of tiered pricing.
32. Telefonica is concerned, therefore, that the proposed new GC 9.7 would apparently mean that tiered pricing will be deemed to give rise to a material detriment, even if that tiered pricing is not a modification to a Subscriber's contract and has been communicated transparently and prominently and agreed with customers at the outset of their contract.
33. If this were the case this would be a significant shift from current policy. Moreover, as Ofcom is aware, Telefonica agrees price changes in line with paragraph A1.14 (example 3) in the Guidance with its customers at the point of sale so a shift in policy of this sort would impact materially on Telefonica's business. This impact would give rise to an unfair commercial burden on Telefonica.

34. The Guidance made clear that two kinds of price increase would not be caught by GC 9.6, set out at para A1.14 of that Guidance, namely example 2 (future price changes agreed at the time a contract is entered into) and example 3 (a price that varies by reference to an index such as $\text{£X} + \text{RPI}$). Ofcom rightly recognised that these kinds of increase should not be regarded as a modification at all, and are accordingly outside the scope of GC 9.6.

[REDACTED]

36. In order to give effect to its existing policy, Ofcom must make clear that tiered pricing of the kind set out in examples 2 and 3 of the Guidance does not give rise to a material detriment.

Core subscription price

37. This is the price that the customer agrees, at the outset of their contract, to pay periodically to their Regulated Provider for the fixed term for a core bundle of services.

38. Ofcom notes in the Guidance that *"The core subscription price is one of the most important factors in the subscriber's choice of contract. It is likely to be the most important aspect of one of the key terms of the contract. There is likely to be a significant possibility that the subscriber would not have entered into that contract had they been bound to pay a different price to that they agreed"*.

39. The Guidance therefore applies only to price increases affecting the core subscription price.

40. The Guidance itself acknowledges that where charges for services *"fall outside our definition of the core subscription price [...] this guidance shall not apply to them"*²¹.

■ [REDACTED]

21

See footnote 3 to the Guidance

41. Thus, Ofcom's existing policy is concerned only with core subscription prices.
42. However, the new proposed GC 9.7 is drafted to encompass price increases to "the sum" which is payable on a "monthly or other regular intervals under the contract" rather than by reference to the core subscription price. As drafted, Telefonica is concerned that GC 9.7. extends to include price increases relating to increases in sums which are payable by a customer outside of the core subscription price, including payments for extra services that customers may choose to take during the course of their contract and/or that the Regulated Providers do not themselves provide or set prices for e.g. directory enquiry services such as 118 118, roaming charges, and premium numbers.
43. Ofcom's Guidance sets out a clear policy position: If Regulated Providers increase their core subscription prices (save for in circumstances of pre-agreed tiered pricing), this will be likely to be construed by Ofcom as a modification of contract which gives rise to a material detriment thereby giving their Consumer and Small Business Customers the right to terminate their contracts without penalty. Ofcom, if it adopts the new proposed GC 9.7, will extend this policy position to price increases for services which do not constitute part of the core bundle of services paid for by the core subscription price. This exposes Telefonica to the risk and uncertainty of Consumers and Small Business Customers seeking to terminate their contracts in circumstances where prices increase, outwith of Telefonica's control, on the non-core services they choose to take. This uncertainty would give rise to an unfair commercial burden on Telefonica.
44. Moreover, Ofcom has not identified any consumer detriment which would actually be addressed as a result of this extension. The Consultation contains no justification for it at all.

Fixed term

45. The Guidance notes that "Ofcom is likely to treat any increase to the agreed core subscription price during the fixed term of such a contract as a modification that is of, or is likely to be of, material detriment"²². (emphasis added)

²² Para A1.3 of the Guidance

46. The fixed term was noted in the Guidance by Ofcom as being one of the “most prominent terms” in telecommunications contracts marketed to consumers²³ and therefore one of the terms on which a Consumer or Small Business Customer makes a purchasing decision.
47. The Guidance (and the policy it expresses) is accordingly confined to price increases during the fixed term.
48. In contrast, however, the new proposed GC 9.7 is not expressly limited to price increases during the fixed term, or, indeed, any term. It appears to apply for so long as a Subscriber has a regular payment obligation to a Regulated Provider.
49. As Ofcom will be aware, when the fixed term ceases, the Consumer and Small Business Customer may choose to terminate their contract without penalty in any event.
50. In these circumstances, extending the current policy position is unnecessary and inconsistent with Ofcom’s stated position. Moreover, again Ofcom has not identified any consumer detriment which would be addressed by this extension of the current policy position.

Subscribers

51. In addition, as Ofcom acknowledge, in adopting the new proposed GC 9.7 the scope of the Guidance would also be extended beyond Consumers and Small Business Customers to all customers of Regulated Providers, including business customers of whatever size and sophistication. We note that Ofcom states that, it is extending the application of the Guidance to large businesses to ensure consistency with the obligations pursuant to the USD. Ofcom add that it would take into account the nature of the agreement and relevant bargaining power when the contract was negotiated in order to assess material detriment.
52. Telefonica accepts that GC 9.6 applies to businesses of all sizes. It does not follow, however, that GC 9.7 must also apply to both “for consistency with the obligations in the Universal Service Directive”.

²³ Para A1.5 of the Guidance

53. That is because the whole purpose of the Guidance (which is to be replaced by GC 9.7) was to identify the nature of material detriment in the case of “consumer and small business subscribers”. Large businesses are in a materially different position in this regard, as the earlier Guidance recognised.
54. The effect of the proposed GC 9.7 is that “any increase” in the sum paid by a large business subscriber, or “exercise of discretion” by an MNO in respect of such a subscriber will be treated as a material detriment. Yet Ofcom has not set out any evidence or reasoning to support this view. On the contrary, paragraph 4.19 of the consultation rightly recognises that:
- “larger business may have stronger bargaining power in relation to CPs and may be able to negotiate with them. That being so, they may be less likely to suffer material detriment in the event of price increases”.*
55. That is evidently correct, but is directly contradicted by Ofcom’s proposed approach which applies a blanket treatment to any such changes in the form of GC 9.7. That is wholly disproportionate and lacking any justification in the Consultation. Ofcom seeks to mitigate that effect by suggesting in paragraph 4.19 on the basis that “in considering cases under this proposal we will take into account the circumstances in which a larger business has entered into a contract and the nature of the contract”. That approach gives rise to serious uncertainty about the application of GC 9.7. It underlines why the kind of “one size fits all” approach set out in GC 9.7 is simply not applicable to large businesses as a group.
56. This is accordingly also a significant change to current policy. It is also a policy change that could have a significant impact on Ofcom: the deeming provision in GC 9.7 may result in Ofcom being drawn into commercial disagreements between sophisticated parties to resolve disputes regarding what is and is not material detriment, where currently it would not be called upon.
57. Telefonica is unaware of failings in the larger “business 2 business” telecommunication services market which required to be addressed in the manner that Ofcom has proposed. It certainly has not put forward any reasoning to support its new approach. Neither is Telefonica aware of business customers specifically

complaining that the market does not provide adequate protection against mid-term contract price rises; nor does Ofcom provide any evidence of such.

58. The large business market is, in fact, highly competitive. Contracts with large businesses are often put out for tender and customers employ their own legal and commercial resource (whether that be one or all of lawyers, procurement team or contract managers) to negotiate the best deal from Regulated Providers. Often these agreements require a significant degree of investment by the Regulated Provider.
59. Ofcom's position is that this is an extension of the current policy (albeit this is at odds with its overarching repeated assertion in the Consultation that it is maintaining its previous policy position), but not one which will impose a burden on Regulated Providers. Telefonica disagrees. This suggested change is a significant departure from the current policy which has the potential to give rise to material burdens on Regulated Providers and Ofcom. Therefore, if it is to be advanced, it is essential it is supported by an impact assessment supported by evidence, and that there is an opportunity for consultation.

Impact assessment

60. As the Consultation purports to maintain the existing policy, it is perhaps unsurprising that there is generally no explanation of the proposed changes in the Consultation itself.
61. The proposed approach, as noted above, is however a shift in Ofcom's policy and were Ofcom to be changing its policy the rationale for such a shift should be explained by Ofcom, by way of an impact assessment. Ofcom has not conducted any such impact assessment because as it has explained, it does not intend to change its policy and accordingly "do not envisage that our proposals would give rise to any additional burdens on CPs".²⁴
62. However, if Ofcom analysed the impact of the proposed approach Telefonica is confident that this would show that the proposed approach would not address any identified user detriment, would increase commercial uncertainty, impose

²⁴ Para 4.20 of the Consultation.

administrative burdens upon MNOs and would accordingly be disproportionate and a breach Ofcom's own "key regulatory principle" of maintaining a bias against regulation and intervening only when needed.²⁵ That principle is stated in Ofcom's Better Policy Making – approach to impact assessment."

63. Accordingly, if Ofcom wishes to adopt the current proposed GC 9.7 and, thereby, change its current policy, Ofcom should undertake an appropriate impact assessment. A further consultation would be required on the results of any such impact assessment.
64. If, as Ofcom says, it proposes to maintain its existing policy, it is essential that it revises the proposed GCs to reflect that policy. To assist Ofcom, Telefonica has proposed alternative wording for the proposed GC 9.7 (see next section below) which would resolve its current concerns.

Proposed re-draft of GC 9.7

65. Telefonica's primary position is that Ofcom should not change the status quo. The Guidance is working well and provides Consumers, Small Business Customers and the industry with certainty regarding the regulatory treatment of price increases to core subscription prices in fixed term contracts. Telefonica has relied upon that Guidance in formulating [REDACTED] the contracts it has entered into with business and consumers.
66. Telefonica understands however that Ofcom is minded to seek to codify the Guidance by bringing it in to the General Conditions.
67. Telefonica is concerned that not only does the new proposed GC 9.7 reflect changes in Ofcom's policy as outlined above, it is also unclear in its drafting. In particular, Telefonica notes that it is not clear how GC 9.7(a) and GC 9.7(b) interact – what price increases are envisaged by GC 9.7(b) that are not caught by GC 9.7(a)? And what aspect of the Guidance is GC 9.7(a) meant to reflect? This lack of clarity in the proposed drafting has the potential at worst to reduce commercial certainty and at best to require further guidance from Ofcom regarding how it intends to apply the GC, thereby defeating the object of the introduction of the new GC.

²⁵ Better Policy Making – Ofcom's approach to impact assessment.

68. Accordingly, if Ofcom is minded to adopt the principles of the Guidance and its current policy in to a GC, Telefonica proposes that Ofcom adopt the following wording which is based on the principles and drafting of the Guidance:

9.7/C1.7

In relation to changes to contractual prices:

- ~~a) any increase to the sum that the Subscriber must pay to the Regulated Provider at monthly or other regular intervals under the contract; and/or~~
- b) a) *the exercise at the discretion of the Regulated Provider of any contractual term or condition which would have the effect of increasing the ~~sum~~ Core Subscription Price that a Consumer or Small Business Customer ~~the Subscriber~~ must pay to the Regulated Provider at monthly or other regular intervals ~~under the~~ during the fixed term of their contract with the Regulated Provider shall be deemed as likely to be of material detriment to a ~~Subscriber~~ a Consumer or Small Business Customer for the purposes of paragraph C1.6(a).*
- b) *Price increases applied pursuant to price models (for example Core Subscription Price + RPI or a percentage or fixed amount change at pre agreed dates) communicated and agreed to by Consumers or Small Business Customers on a prominent and transparent basis prior to entry into their contract do not constitute a modification for the purposes of paragraph C1.6 and so are not capable of meeting C1.6's material detriment requirement.*

69. If this wording is adopted by Ofcom, it will need to include a new definition for Core Subscription Price. Telefonica suggests the following:

"Core Subscription Price means the price for the inclusive package of services that the Regulated Provider agrees to provide a Consumer or Small Business Customer in consideration for a recurring (normally monthly) payment. This differs from the non-subscription price(s) which are charged by Regulated Providers for services that fall outside of the relevant inclusive package or core subscription, and which are billed incrementally when such services are used by the customer, for example, for mobile customers they typically (though not necessarily) include charges: incurred when they exceed their monthly inclusive allowance of services,

and for premium rate services, NGCs, directory enquiries, making calls and sending texts internationally and roaming services.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

Complaints Handling and Access to ADR²⁶ - Ofcom proposes to significantly strengthen the rules on complaints handling to ensure that CPs deal with complaints from consumers promptly and effectively

77. We share Ofcom's view that it is important that customer complaints are dealt with promptly and effectively.

78. Telefonica is proud to have been ranked No 1 network for Customer Service Satisfaction by Ofcom seven times in a row. This includes satisfaction with Complaints Handling.

79. We support Ofcom's proposals.

Measures to meet the needs of vulnerable consumers and end-users with disabilities²⁷ - Ofcom proposes to introduce a new obligation requiring CPs to establish policies to ensure they take account of the needs of all vulnerable consumers

80. We believe it is important that all our customers are dealt with fairly and appropriately. As part of this, we already have a range of arrangements in place to assist vulnerable customers, such as third party account management, power of

²⁶ Section 7 of the Ofcom Consultation

²⁷ Section 9 of the Ofcom Consultation

attorney, transfer of ownership, debt management, bereavement and online safety. Our Access for All materials also provides information about our GC15 services²⁸.

81. However, we believe it is premature for Ofcom to seek to mandate measures²⁹ in the GCs without a more detailed dialogue with CPs.
82. Moreover, Ofcom's impact assessment in the Ofcom Consultation is incorrect. Ofcom suggests that the costs of extending regulation will not be so great because CPs are already required to identify and record the needs of disabled customers³⁰ [para 9.16]. However, Ofcom's Guidance³¹ in relation to GC15 does not require CPs to record information, but rather it explains that CPs "may" record information to assist in serving customers³².
83. Furthermore, we note Ofcom proposes to extend the GC15 requirements in relation to disabled customers to all public electronic communications services, including data services such as broadband. In respect of "priority fault repair", Ofcom states that mobile is already covered. However, Ofcom's GC15 Guidance states that the obligations for "priority fault repair" are landline only³³. An implementation 3-6 months would be inadequate should system changes be mandated³⁴.

²⁸ <http://www.o2.co.uk/access-for-all>

²⁹ In relation to "Consumers who may be vulnerable due to circumstances, including but not limited to, age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement or divorce;

³⁰ "CPs are already required to have procedures and processes in place to ensure they adequately identify and consider the needs of end-users with disabilities. Therefore, any incremental cost of broadening these procedures and processes to consider also the needs of vulnerable consumers should not be disproportionate. In addition, we consider that any incremental costs would be proportionate since the way in which we are proposing to implement this new requirement is the least intrusive mechanism to achieve the intended purpose.

³¹ https://www.ofcom.org.uk/data/assets/pdf_file/0015/81132/guidance.pdf

³² "CPs may wish to have a process/system in place to record those needs (and the ability to amend those records) for future reference."

³³ "Priority fault repair (landline only) for disabled consumers who have a genuine need for an urgent repair." [para 1.6] and <https://www.ofcom.org.uk/research-and-data/telecoms-research/services-for-disabled-users>

³⁴ 9.17 As set out in paragraph 3.25 above, we recognise that CPs may require a short transitional period to bring their policies and practices into line with the revised regulatory requirements we are proposing. Our provisional view is that an implementation period of 3 to 6 months ought to be sufficient to allow industry to make all the necessary changes to their processes and procedures to ensure compliance with the revised conditions.

84. Ofcom's proposals in respect of vulnerable consumers and priority fault repair for disabled customers are lacking a robust Impact Assessment. Without such an assessment, we do not believe that the proposed intervention meets Ofcom's Better Policy Making principles.

Calling line identification facilities³⁵ - Ofcom proposes to extend the current rules on the provision of calling line identification ("CLI") facilities to improve the accuracy and availability of the CLI data presented to call recipients and to require the blocking of calls with invalid CLI

19. Ofcom proposes to update the GCs to mandate the implementation of technical measures to block invalid and non-diallable CLI under the GC regime.

20. However, as Ofcom will be aware, there is an established Ofcom MoU with industry under which the implementation of technical measures is already being progressed³⁶. As such, there is an evolving implementation of technical solutions.

21. Accordingly, given that measures are already being pursued, it is premature to mandate technical measures under the GCs.

22. We would propose that there is a more detailed discussion with industry as to whether there is a need for mandating technical solutions in accordance with Ofcom's Better Policy Making principles and Ofcom's duties.

³⁵ Section 10 of the Ofcom Consultation

³⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0026/31859/nuisance_calls-tech-mou.pdf and <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-industry-guidance/calling-line-identification>

Other³⁷ – Ofcom proposes to extend certain conditions which currently apply only to call services to other forms of electronic communications services, in particular the provisions on billing requirements and measures to meet the needs of end-users with disabilities as well as proposing to extend the Ofcom Metering and Billing Scheme to data

The metering and Billing Approval Scheme

85. We note Ofcom proposes to extend the Metering and Billing Approval Scheme to data services.

86. We support this. However, we would point out that the transitional period for this will need to reflect the Metering and Billing schemes established change process and timescales.

Debt collection/ disconnection policies

87. We note that Ofcom proposes to extend the fixed line rules on debt collection and disconnection procedures for non-payment of bills to mobile (these are the rules intended to protect customers from immediate or unfair disconnection from the network on the grounds of an unpaid bill). [para 6.4]

88. We understand Ofcom makes this proposal on the basis of complaints data³⁸, the overall take-up of mobile and a dialogue with Citizens Advice.

89. However, Ofcom does not disclose any complaints data (other than saying it is higher than fixed – but of course there are significantly more mobile customers than fixed line). Nor is there any substantive detail as to the Citizens Advice Data. Nor any assessment of consumer harm (including scale).

90. This is not transparent or sound policy making. Ofcom fails to demonstrate that its proposals are objectively justifiable as it asserts [para 6.57].

³⁷ Including Section 6 -Billing Requirements

A more realistic implementation period in consultation with industry

91. We welcome Ofcom's recognition that CPs will require a transitional period to bring any new policies and practices into line with the revised regulatory requirements. However, we believe that Ofcom underestimates the transitional period necessary. We anticipate that implementing business change in response to a widespread overhaul of the GCs which, as Ofcom recognises, have built up over a decade of more, is likely to be a significant programme. The changes will require work to identify, review and update policies, procedures and training materials. A period of staff familiarisation will also be necessary. Our initial view is that a minimum period of 9 - 12 months is likely to be more appropriate than the 3-6 months Ofcom suggests.
92. Moreover, we would anticipate a minimum of 12-18 months is likely to be required for the inclusion of data within the Metering and Billing Scheme and any significant IT system changes.

IV. CONCLUDING COMMENTS

93. We welcome Ofcom's intent to ensure that the GCs are fit for purpose.
94. As discussed herein, there are three main areas where we believe Ofcom must change its approach:
- i. Ofcom must revise its proposals to amend GC9.6 and 9.7 to reflect Ofcom's stated policy;
 - ii. Ofcom must engage in deeper consultation with industry before action regarding the proposals to extend the scope of the GCs to vulnerable customers and CLI measures;
 - iii. A more realistic implementation period to make changes is required (in consultation with industry).

95. We welcome the opportunity to respond to Ofcom's proposals. We trust our response assists Ofcom ensure that its proposals deliver the right regulatory regime in view of Ofcom's duties.

Telefonica UK Limited
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