Vodafone Ltd Response

14 March 2017

Response to Ofcom Consultation:
Review of the General Conditions of Entitlement Relating to Consumer Protection

Executive Summary

Vodafone, for a number of years, has called for a broad and thorough review of the General Conditions of Entitlement (GCs) to reduce complexity and the uncertainty created by a patchwork of iterations. In addition, the existing GCs suffer from internal inconsistencies of definition and approach, some containing highly detailed annexes whilst other rely on external references to guidance or the contents of the original implementing statement.

Vodafone is then pleased to see that Ofcom will address many of the problems that exist with the current GCs, establishing a common set of definitions, a user-friendly structure grouped by area of regulation and recitals making it transparent to whom the GC applies. However, amidst general improvements to clarity there remains significant concern regarding the unintended consequences of several key proposals and other missed opportunities in relation to regulatory streamlining.

In summary Vodafone's main concerns are that:

The drafting of General Condition 9.6 (a) does not replicate the existing condition as intended, (b) fundamentally changes the definition of material detriment and (c) is at complete odds with Ofcom's earlier guidance on the meaning of the term;

Regulatory creep, unsupported by cost benefit analysis or supporting material, is evident in relation to corporate customers, complaint handling, metering and billing, CLI provisioning and the needs of vulnerable customers resulting in some changes which do not meet the test of proportionality;

The removal of the prohibition on reactive save activity within fixed line switching removes vital protection without considering the competitive impact on smaller competitors to BT;

Duplication of regulation, in contravention of Article 6 of the Authorisation Directive, has not been resolved; and

Assumptions made regarding implementation timescales are in some circumstances unrealistic.

Vodafone sets out below further detail on its key concerns, followed by its responses to the questions posed by Ofcom as part of its consultation.

Key concerns

Material Detriment

Vodafone has significant concerns regarding Ofcom's proposals to revise the meaning of 'material detriment' for the purposes of the current GC9.6. Vodafone queries the necessity to incorporate into the regulation what is currently contained in guidance. It is plainly the case that changing the status from guidance removes any flexibility in adapting the meaning of the concept to the circumstances in question. Ofcom has to date not adequately explained why this approach is necessary or justified.

In October 2013, Ofcom announced that it was allowing consumers to leave their contracts for free if they were subjected to mid-contract price rises resulting in material detriment. Vodafone launched its "Fixed means fixed" price promise in response whilst other MNOs introduced annualised RPI price rise mechanisms to their contracts and purported to transparently make customers aware of impact of the mid-contract price rises. Ofcom gave the practice legitimacy and enshrined it in guidance to industry issued on 22nd January 2014. This guidance remains in place today and MNOs have typically adopted the RPI increase approach.

Vodafone's experience underlines the importance of clear rules and guidance when intervening in commercial arrangements. Despite heavy promotion in retail stores Vodafone's policy of "Fixed means fixed" - that core subscription prices would never increase during the initial commitment period – had little resonance with customers and failed to realise the commercial benefit offered by transparent tiered pricing. As a result Vodafone had little choice commercially but to adopt a similar RPI mechanism.

Vodafone agrees that guidance in relation to 'material detriment' is therefore essential to avoid further consumer confusion and unnecessary cost being incurred by the industry as a result of further intervention. Ofcom's stated intention is to clarify rather than modify GC9., however we do not see that this ambition has been achieved given the proposal to effectively 'fix' the definition of material detriment as part of the regulation in question. In any event, the very reasonable expectation is that any clarification would reflect the current clear guidance and previous written correspondence from Ofcom to Vodafone on the matter, however as explained below this has not been achieved.

Ofcom proposes to revoke its guidance and to include in GC9.6 how 'material detriment' should be interpreted. While Vodafone is supportive of Ofcom's attempts at providing further clarity on this important concept, it does not agree that achieving this by converting what was previously

flexible guidance into a strict regulatory requirement is helpful. More importantly, Vodafone is concerned that the substance of the concept and therefore the definition of 'material detriment' has changed materially.

Ofcom's proposed text states:

> *"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)."*

The revised wording is less clear than current guidance which refers to the 'core subscription price' and draws, therefore, a distinction between 'non-core' elements of a subscription price. This distinction does not exist in Ofcom's proposed wording so it is not clear, for example, whether charges for calls to a foreign country that fall outside of a customer's subscription bundle (but which that customer makes, say, weekly and therefore at 'regular intervals') is within or outside of the scope of a) and b).

In addition, because a distinction is no longer drawn between the core and non-core prices that a customer pays for services under its contract with a CP, it is unclear whether unilateral prices changes to the non-core elements in line with RPI changes will be permitted (i.e. whether price changes to the non-subscription elements so as to maintain the price in real terms will be permitted). Communication Providers (CPs) have relied heavily on this assumption when devising their various subscription and non-subscription prices and a sudden reinterpretation of the permitted changes to the non-subscription elements would impact CPs significantly – and is likely to trigger a remodelling of prices across CPs' portfolio of products.

Consequently, Vodafone would like to see Ofcom revise its proposals on GC9.6 and the meaning of 'material detriment' so that the existing guidance is replicated in place of the new text set out under paragraph 4.18 of the consultation. This would continue to provide important clarity to industry and consumers whilst maintaining flexibility for industry.

Scope Creep

Vodafone has noted with some surprise and concern that Ofcom proposes to extend the scope of GC9.6 to corporate customers (rather than it being confined to domestic and small business customers as it is currently). Ofcom says this is to reflect the wording of the underlying USD[1] which refers to "subscribers". Despite this, the European legislature – and, to date, Ofcom – have

[1] **See paragraph 4.19 of the consultation.**

sensibly focused their consumer protection attention and measures on domestic customers and very small businesses. Ofcom has no doubt adopted this position because of the perceived inequality in bargaining position that can sometimes occur between consumers and micro businesses on the one hand and CPs on the other. Large corporate customers, whose service requirements and ability to negotiate robust and complex contracts are very different to typical domestic customers. Put simply, corporate customers rarely require the type of protection provided under consumer protection law.

The potential scope of such a change in the regulations is huge and may result in consequences far beyond what Ofcom had intended given the very broad definition of "subscriber" in both the Framework Directive and the current GCs. For example, it is possible that wholesale telephony contracts could be caught, such as agreements for interconnection, connectivity and number hosting, and MVNO arrangements.

Vodafone notes that Ofcom has not offered any evidence or substantive rationale as to why the relevant provisions should be extended to corporate customers. If Ofcom is minded to make such a significant change, it should be the subject of separate consultation for stakeholders to consider and comment – together with a full impact assessment.

Consequently, Vodafone strongly believes that Ofcom should reconsider its current proposal to extend the scope of GC9.6 so as to apply to corporate customers on the basis it is unnecessary and seeks to address a problem that does not exist. As matters stand, it appears debatable whether Ofcom's proposals meet the requirement of being objectively justifiable or proportionate for the purposes of s45(a) and (c) CA03.

Reactive Save

Vodafone is surprised to see that Ofcom has made such a policy shift by proposing to remove the reactive save prohibition as part of this exercise. Vodafone strongly opposes the proposal as it is Vodafone's stongly held opinion that the prohibition ensures 'cancel own' services are not over-used to the detriment of smaller providers, and protects consumers from receiving marketing messaging designed to hinder the switching process.

Vodafone is concerned with the principle of Ofcom making such an about-face move which is backed up by little rationale and with scant discussion on the subject. Prior to such an important decision, Vodafone expects Ofcom to consult and carry out a full impact assessment on its proposals.

Duplication

One of Vodafone's pervasive concerns relates to the duplication of regulation whereby Ofcom is proposing to incorporate in the GCs points already covered under domestic consumer protection law. Not only does such duplication fly in the face of legal certainty, it is questionable whether it is lawful in light the requirements of Article 6 of the Authorisation Directive (the "AuD"). The rationale for this is as follows. Article 6(1) of the AuD provides that: "The general authorisation for the provision of electronic communications networks or services [...] may be subject only to the

conditions listed in the Annex. Such conditions shall be non-discriminatory, proportionate and transparent [.]
Article 6(3) of the AuD provides that: "The general authorisation shall only contain conditions which are specific for that sector and are set out in Part A of the Annex and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation."

As is clear from the text of Article 6(3) AuD set out above, there are three prerequisites to the imposition of a condition under that provision:

- specificity to the electronic communications sector;
- identification in the 'exhaustive list' in Part A of the Annex to the Directive and;
- the absence of duplication with 'conditions [...]applicable [...] by virtue of' other national legislation.

Vodafone believes that some of Ofcom's proposals meet the first two of these requirements, in particular by corresponding to a measure within § 8 of Annex A, but others do not meet the third requirement – particularly the changes concerning contract requirements and information publication. These points are discussed in more detail below.

Timescales

Aside from the substance of Ofcom's proposals, Vodafone is concerned about the very short period of 3 – 6 months that Ofcom has suggested for implementation. Many of Ofcom's proposals require substantial engineering resources to be deployed - together with time and associated investment - for a suitable solution to be created. Other proposals will require significant procedural changes which, together with the associated change in staff training, will require longer than 3 – 6 months to implement successfully. In light of these considerations, Vodafone believes that Ofcom's cursory handling of the implementation period in paragraph 3.25 of the consultation is insufficient and the unreasonably short time period proposed could be challenged under s45(a) and (c) CA03 on the grounds the proposal is not objectively justifiable or proportionate.

One example of particular concern relates to the inclusion of data under the Metering and Billing scheme. The Ofcom Metering and Billing Direction (2014) contains clearly defined timescales for seeking new or revised accreditations depending on whether the application is for a new billing system or a revision to an existing system. These timescales are not solely to cover the billing system itself but also to ensure that operators have a robust and comprehensive management system in place.

Indeed, some of the processes involved will be similar to those captured under the existing voice accreditations, but ensuring all of the document controls alone for data are in place for a company the size of Vodafone will require considerable time and resource. The level of substantial change required is commensurate with that of a new or separate application rather than the simple extension of scope Ofcom seems to envisage.

Section 3.2 of the Direction requires that CPs submit an application for approval within six months and then agree a 24-month plan with their chosen approval body in order to gain accreditation at the end of the period.

The counterfactual would be to require industry as a whole establishing what was required within three months to gain accreditation within six months. Were this to happen the stress placed on industry resources and the relevant Approval Bodies would be unacceptable. The most obvious bottleneck is the Approval Bodies which would simply be unable to cope with the necessary volume of work (nor due to the expertise required would it be possible to quickly scale up to meet demand); not to mention the knock-on impact to pre-existing voice applications and audits.

Furthermore CPs cannot achieve compliance in perfect isolation. There is a need for CPs to work together to understand requirements and agree common approaches where overlaps of common processes exist. This is most obvious in the MVNO / reseller space where companies such as Lebara or Daisy are effectively dependent on the compliance of their wholesale provider. Such co-ordination without the requisite time period effectively means these operators will be unable to meet their compliance obligations.

In addition any applicant as part of the approval process has to demonstrate to its Approval Body that it has six months of performance data within the necessary accuracy thresholds.

It is therefore impossible for an operator to achieve implementation of the changes to GC 11 within a 3-6 month timescale.

Ofcom should provide CPs the timescales applicable under the existing Metering and Billing Direction (2014) and allow CPs to agree a 24 month timescale with their Approval Body.

Questions

Question 1: Do you agree with our overall approach to this review of the general conditions as set out in sections 2 and 3 of this consultation? Please give reasons for your views.

Vodafone supports the goal of ensuring, wherever possible, that the GCs can be understood as a standalone document, without the reader having to refer to separate annexes, guidance or codes of practice, however as explained above this should not be at the expense of much needed flexibility. In particular, Ofcom should be aware that incorporating what is effectively guidance into a regulatory condition alters that nature and standing of that guidance to effectively become a regulatory requirement. It is not clear that this is Ofcom's intention.

As set out in our response to the first half of the review of the GCs[2], Vodafone is supportive of adding a short recital to each of the GCs highlighting the purpose and background of the condition. The use of consistent definitions across the conditions will also assist clarity and is welcomed. In particular, the proposal to define the CPs that the GC is relevant to within the recital

[2] https://www.ofcom.org.uk/__data/assets/pdf_file/0017/94103/Vodafone.pdf pp2-4

will remove both the need for bespoke definitions of 'communications provider' and the need to consult original legislation to clarify which service is relevant to each condition.

Vodafone also accepts that in some scenarios, Ofcom will need to utilise separate annexes or guidance. However, this should be reserved only for areas where flexibility is required or where requirements are subject to change more frequently than the conditions themselves. However, when guidance or annexes are amended, Vodafone urges Ofcom to apply the same level of rigour and industry engagement as any amendment to the conditions themselves. Where such documents are utilised, Vodafone asks that Ofcom ensures that a footer is provided within the relevant condition.

Vodafone also welcomes the proposal to break out the conditions into three segments, with 'Part C' containing all consumer protection conditions. Such segmentation is intuitive and will enable easier cross-referencing when considering the requirements of multiple conditions.

Question 2: Do you agree with our proposed implementation period for the revised general conditions of 3 to 6 months following publication of our final statement? If you think a longer implementation period is necessary, please explain why, giving reasons for your views.

No, Vodafone does not support the proproposed implementation period. The full GCs Review details changes to almost all of the GCs; whilst most of these changes concern points of clarity, some of the changes are substantial and, if implemented as drafted, would require significant capital spend and time to scope, design, build and test. The most notable examples are the proposed changes to complaint handling, billing requirements and the rights of vulnerable customers. For these elements, Vodafone urges Ofcom to consult on and apply bespoke timeframes, in consideration of the investment and time required to implement these changes. In response to the questions dedicated to these areas, we offer recommended timescales for implementation.

Further, as set out in the response to section 10, Vodafone considers that the changes relating to CLI cannot be enacted without first collaboratively agreeing guidance with industry of what can be reasonably expected to be technically feasible.

Finally, because the review has been split into two parts and the result of the first consultation is not yet published, Vodafone believes it only right that Ofcom provides a consolidated set of GCs for the whole exercise, in order that stakeholders can highlight any inconsistencies, prior to the revised GCs being brought into force.

Question 3: Do you agree with our proposals in relation to contract requirements? If you consider that we should retain the regime applying to contracts concluded before 26 May 2011, please explain why, giving reasons for your views.

<u>Relationship with General Consumer Legislation</u>

Vodafone is concerned that Ofcom is proposing to incorporate into the GCs points already covered under domestic consumer protection law. Not only does such duplication fly in the face of legal certainty, it is questionable whether it is lawful in light of the requirements of Article 6 of the Authorisation Directive (AD).

Article 6(1) of the AD states that: "The general authorisation for the provision of electronic communications networks or services [...] may be subject only to the conditions listed in the Annex. Such conditions shall be non-discriminatory, proportionate and transparent."
Article 6(3) of the AD states that: "The general authorisation shall only contain conditions which are specific for that sector and are set out in Part A of the Annex and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation."

There are then three prerequisites to the imposition of a condition under that provision:

(i) specificity to the electronic communications sector;
(ii) identification in the 'exhaustive list' in Part A of the Annex to the Directive and;
(iii) the absence of duplication with 'conditions [...]applicable [...] by virtue of' other national legislation.

Ofcom proposes that the current GC 9 could be improved to 'make it easier and clearer to understand'. Further, Ofcom acknowledges that there is some overlap between consumer law and GC 9. However, Ofcom concludes that the condition is still required as it transposes the minimum requirements currently set out in Article 20 of the Universal Service Directive, thereby enabling Ofcom to address sector-specific issues.

Vodafone believes that Ofcom's proposals concerning contract requirements and information publication may not meet the third element listed above.

Contractual Changes
In section 4.17 of the consultation, Ofcom proposes 'clarify[ing] the drafting of the condition GC9.6, by specifying how this obligation applies to price rises in the condition itself'. However, the proposed insertion offers a radically different threshold of material detriment when compared to the current guidance.

For example, the current guidance details two examples of core subscription price rises occuring within the initial commitment period that would not consitutute material detriment and the consequent right to leave. To be precise, in section A1.14, the guidance states that both;

> *£X per month for the first 12-months (or some other period) and £X + £Y (or £X + Y%) for the second 12-months (or some other period), and;*
>
> *£X per month for the first 12-months (or some other period) and £X + RPI10 for the second 12-months (or some other period),*

.... are permissable, on the grounds that the relevant price terms are sufficiently prominent and transparent that the subscriber can properly be said to have agreed on an informed basis, at the point of sale, to the relevant tiered price(s)[3].

However, the new proposal appears to contradict this guidance, as it 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'[4]. This would then suggest that the examples of non-materially detrimental price rises offered in the current guidance would now constitute material detriment. The outcome is then not one of 'clarifying the current condition' as Ofcom has stated, but a radical lowering of the material detriment threshold. Indeed, the definition of "material detriment" to mean "any increase" implies that even the most trivial increase is now considered material.

Such an outcome has significant repercussions for both consumers and businesses. Regulated Providers including Vodafone would be unable to implement contractually agreed increases to monthly charges without offering the subscriber the right to leave, thereby exposing providers to an unforeseen commercial risk. Further, as Ofcom intends to extend the scope of the condition to cover all subscribers (rather than just consumers and small businesses of up to 10 employees), many of the largest enterprise customers will be granted the right to terminate their agreement, as many large businesses negotiate bespoke rates that change to pre-agreed levels dependant upon levels of usage. As the proposal stands, this form of contract would no longer be offered, stifling contractual flexibility within the industry and limiting customer choice. Extending this rule to businesses of more than 10 employees would then reduce flexibility but for little gain; there is little harm to address here as large organisations have negotiating buying power, in house legal support and expericnce in contractual negotiation.

Ofcom's proposed amendment also makes no distinction between core subscription services and 'non-core' services. To clarify, a core subscription service is a service provided as part of the monthly standard charge. A 'non-core' element would be outside of the monthly standard charge, such as international calls. Assessing material detriment for non-core service price increases currently requires assessing the propensity of a customer to use a particular service and whether the price rise would increase their overall bill to a level that would constitute material detriment.

Instead, Ofcom's proposal states that '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... shall be deemed likely to be of material detriment'. Such a proposal is poorly worded, as it places the right to leave as a dependency on an unknown at the point of making the price rise. The different situations in which a) and b) of paragraph 4.18 would apply are not readily clear. For instance, if a regulated provider is to

[3] https://www.ofcom.org.uk/__data/assets/pdf_file/0027/29682/guidance.pdf
[4] ibid

increase international calls to 'location x', it cannot know which customers will call 'location x' when the price rise comes into force. Given the proposed wording, it would not then be clear whether all customers would be given the right to leave, as they could be impacted by the price rise. It would clearly not be proportionate to offer the right to leave to customers who would never be impacted by a price rise, so It is then reasonable to keep the current guidance as it stands.

Given the above concerns, Vodafone proposes that Ofcom abandon the proposed insertion detailed in 4.18 of the consultation. Instead, Vodafone proposes that the following edit of GC 9.6:

"Regulated Providers shall:

a) give their Consumer and Small Business Customers adequate notice not shorter than one month of any contractual modifications likely to be of material detriment to them;

b) allow their Consumers and Small Business Customers to withdraw from their contract without penalty upon such notice; and

c) at the same time as giving the notice in condition C1.6(a) above, shall inform their Consumers and Small Business Customers of their ability to terminate the contract without penalty if the proposed modification is not acceptable to them.

In relation to changes to contractual prices:

a) the exercise at the discretion of the Regulated Provider of any contractual term or condition which would have the effect of increasing the Core Subscription Price that a Consumer or Small Business Customer must pay to the Regulated Provider at monthly or other regular intervals during the fixed term of their contract with the Regulated Provider shall be deemed as likely to be of material detriment to a Consumer or Small Business Customer for the purposes of paragraph C1.6(a).

b) Price increases which are applied pursuant to price models (for example Core Subscription Price + RPI or % change at pre agreed dates) communicated to Consumers and Small Business Customers on a prominent and transparent basis prior to entry into their contract and clearly agreed with Consumers and Small Business Customers as part of 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.

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

"Core Subscription Price means the price for the services that are included in the package that the Regulated Provider agrees to provide the Subscriber in consideration for a regular (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."

Alternatively, Ofcom way wish to maintain the position of providing guidance as a separate document to the condition itself. Vodafone's view is that either outcome would be preferable to the proposed insertion detailed in the consultation, given the restrictions this proposal would place on future tariff structure and the commercial exposure such a change would cause in the short term. Such a proposal, given the changes it would result in, goes far beyond clarifying the current guidance, hence requires substantially more evidence to support such a radical change in the definition of 'material detriment'.

On this point, Ofcom should note that prior to moving to the annualised RPI price rise mechanism, Vodafone supported a 'fixed means fixed' policy, which ensured that core subscription prices would never increase for consumers during the length of their initial commitment period. However, Vodafone did not seen an inflow benefit from promoting a "Fixed is Fixed" promise. Further, as Ofcom did not prohibit such activity, Vodafone had little choice but to follow the market trend.

Minimum Information

Vodafone supports amending the list of minimum information that must be included in contracts, currently in GC 9.2, to mirror the list required within GC 10.2. Further, Vodafone notes that these extra elements are already provided by Vodafone within its customer contracts.

However, while Vodafone acknowledges the benefit of the drafting changes that have been proposed, Vodafone questions the need for some of these information publication requirements to exist at all. Vodafone believes that many of the requirements in GC10 are already required under existing national consumer protection law including, but not limited to, paragraph 6(4) of the Consumer Protection from Unfair Trading Regulations 2008/1277 and Regulations 10.1 and 13.1 and schedule 2 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

Vodafone notes that in the consultation document, Ofcom countered this argument emphasising that this information is explicitly required in Article 21 of the USD. However, this does not address the original point that this information is already required by national law, hence Ofcom need not include these elements within the General Conditions. Further, to do so would needlessly entrench European legislation, at a time when the UK is expected to leave the EU.

Legacy Contracts

Vodafone supports removing the reference to contracts concluded prior to 26 May 2011.

Automatically Renewable Contracts

Vodafone supports amending the prohibition on automatically renewable contracts to cover all Public Electronic Communications Services, as it is already widely accepted within the UK industry that such contracts act as disincentive to switching and would not be permissable.

Question 4: Are there any other modifications to the proposed revised condition in relation to contracts requirements that you consider would be appropriate?

As detailed in the above response to question 3, Vodafone proposes that Ofcom adopts a definition of material detriment that would still permit tiered pricing structures within the existing guidance. Further, it is vital that such a definition allows for a distinction between core and non-core pricing, otherwise the right to leave risks being expanded to customers that may ultimately not be detrimented.

Question 5: Do you agree with our proposals in relation to information publication and transparency requirements, including removing the separate condition relating to publication of quality of service information?

General Comments

Yes, Vodafone supports maintaining the information publication requirements currently detailed within GC 10. Combining this information with the price transparency requirements of GC 9 will avoid the current duplication and will provide a single condition that details all information that must be offered to the subscriber.

Vodafone also supports expanding the scope of this new condition to cover all Public Electronic Communication Services, as opposed to just Publicly Available Telephony Services. As telephony services are increasingly bundled with electronic communications services, such an extension is logical as it will ensure that those purchasing such bundles are better able to make informed choices regarding their selection of provider. Further, we agree that such an amendment will bring the condition in line with Article 21 of the Universal Service Directive.

Further, the incorporation of the amended paragraphs 3 and 4 of annex 2 of GC 14 directly into the new GC will assist Regulated Providers when navigating the conditions.

Quality of Service (QoS) Information

In regards to QoS obligations, GC21 currently enables Ofcom to require communication providers to publish 'comparable, adequate and up to date information on the quality of their services'. The condition can then be implemented through Ofcom having the power to make directions about the publication of QoS data, including parameters to be measured and timing of publication where required. In practice Ofcom has not utilised this power since the GC was disapplied following closure of the TopComm Direction in May 2009.

However, section 134D of the draft Digital Economy Bill essentially offers the same powers, but also goes further in giving Ofcom the explicit power to conduct such comparative analysis, be that through compelling communication providers to publish such data, or through Ofcom

gathering this data and publishing the data itself. Vodafone then agrees that the bill, (as currently drafted) removes the need for GC21. For that reason, deleting GC 21 and moving QoS publication powers to the new GC concerning transparency obligations is a sensible proposal.

With that said, Vodafone urges Ofcom to only use such powers as a last resort. Where commercial, voluntary alternatives are already providing and comparing the required data, the use of such powers would be disproportionate to the marginal benefit provided to customers. Should such powers be used and Ofcom seek to publish communication provider data for the purpose of enabling comparison, this should continue to be done via a full and thorough discussion with industry concerning the parameters of the data required and the balance between informing customers of the burden placed on providers in gathering this information. Regardless of whether the Digital Economy Bill supercedes GC 21 or not, Vodafone urges Ofcom to maintain the collaborative approach that it currently uses when gathering QoS data.

Question 6: Do you agree with our proposal to replace the existing detailed requirements in relation to small businesses with a general obligation to ensure price transparency and to notify small business customers where the terms and conditions that apply to them differ from those that providers are required to comply with in relation to consumers?

No. Vodafone is concerned that the full proposal, whilst with good intention, will only confuse small businesses and may result in inadvertent harm.

Ofcom's proposal concerning replacing existing requirements in relation to small business contains two elements:

1. Replace detailed requirements with a general obligation to ensure transparency.
2. Notify small business customers where the tariff structure and prices that apply to them differ from those that providers must offer to consumers.

The first proposal is not addressing an evidenced issue or aligning to a professed goal of improving clarity of the conditions. Ofcom does not provide a reason as to why a general obligation should be offered to small businesses whereas detailed requirements must remain for consumers. For consistency Vodafone expects that the obligations for both groups should be the same unless there is an objective and proportionate reason for distinguishing between the groups.

The second proposal then looks to address the disparity caused by the first, which as stated above appears to have no objective justification. Further, the second proposal would have the Regulated Provider inform the small business customer not only of the rights relevant to them, but also of those of the consumer where there is a difference. In some scenarios, the small busiiness is then provided with two sets of information, one of which will not be relevant (or in some cases even available) to them. The Regulated Provider would still be obliged to provide the same level of information as required to be provided to a consumer, even if the obligation is packaged as a general obligation. Explaining discrepencies between consumer and small

business terms then only adds to the information that would need to be provided to the small business. This is then entirely contradictory to the stated purpose of this change; to 'remove overlap and duplication' and 'make the condition clearer'.

Question 7: Are there any other modifications to the conditions relating to information publication and transparency requirements that you consider would be appropriate?

In light of the concerns raised regarding small businesses, Vodafone proposes that Ofcom simply extends the remit of the new condition concerning transparency obligations to cover both consumers and small businesses in the same manner; ensuring that the detailed requirements apply to consumers and businesses of up to 10 employees. Such an outcome will ensure that small businesses are as informed as consumers when making purchasing decisions, and are not inadvertantly misled by being informed of the differences between small business and consumer terms.

Question 8: Do you agree with our proposals for updating the current conditions that relate to billing? In particular, do you agree with our proposals to extend the current protection for end-users in relation to billing so that they would apply, more generally, to fixed and mobile voice and data services?

...

Question 9: Do you agree with our provisional assessment that our proposals to extend the regulatory requirements for billing to fixed and mobile voice call and data services does not impose a disproportionate burden on industry? Do you have any further information on the likely costs of these proposals?

Accurate Billing

Vodafone tentatively supports changes to clarify that the obligation is not only to provide an accurate bill, but to also ensure that the end-user is not overcharged, even when the bill is accurate. Further, these amendments, along with the consequential redefinition of 'bill', update the condition to be relevant to alternative means by which customers can proactively check their bill, such as through mobile applications or Interactive Voice Response services.

Whilst in principle these changes are welcomed, Vodafone urges Ofcom to acknowledge that services that offer the proactive checking of a bill may contain a time lag. Where this is technically inevitable (such as for roaming data services), Ofcom should accept that such bill information is accurate as long as this caveat is clearly explained to the customer. Further, as this condition is rightfully expanded to demand that the end-user is not over charged, it may be a better fit within the amended GC 23.

Further, Vodafone acknowledges and agrees with the need for customers to be protected from receiving inaccurate bills. Clearly, it is very important to ensure that all CPs bill their customers

accurately and that their metering and billing systems are designed and operated with that in mind. Vodafone is concerned however, that Ofcom has not taken the opportunity to address an inconsistency in approach regarding the degree of accuracy required in GC11.1 and GC11.2. CPs to which GC11.2 applies have a degree of tolerance in respect of the required accuracy that their metering and billing systems must meet in order to be certified by BABT. This low tolerance figure helps ensure that the regime is pragmatic and is not triggered by immaterial inaccuracies (which arise in any billing system, no matter how well-managed). GC11.1, on the other hand, makes no such provision for a tolerance figure, and an inaccuracy – no matter how trivial – will, on its face, constitute a breach (for example, an over-charge of one pence to a single customer over an entire year). The absence of such a tolerance raises doubts as to the proportionality of the substance of GC11.1 itself, as well as in respect of any enforcement action where a negligible inaccuracy occurred which did not present a consumer protection concern. To help make the regime more suitable for real-world use, Vodafone feels it would be helpful for Ofcom to specify that level of materiality that applies to GC11.2 will also apply to GC11.1 (either within the GC itself or as a matter of administrative practice by Ofcom). This would provide helpful guidance to CPs and customers in respect of billing accuracy.

Record Retention

In principle, Vodafone supports Ofcom specifying a minimum retention period directly within the GC and support this threshold aligning to the 12 month cycle stipulated within the Ofcom Metering and Billing Direction.

TMBS Approval

Vodafone supports the expansion of the Metering and Billing Approval Scheme to cover mobile data services and was already discussing plans with its Approval Body to do so voluntarily. Increasingly CPs are bundling billing for a number of services which include not only data but content. With converged billing it is far more difficult to strip out the accuracy of individual elements such as voice, data and content. If data continues to be excluded from mobile billing, alongside content and insurance charges, it is increasingly the case that any calculation of of billing accuracy, without one of the core elements, is based on assumption rather than accuracy.

As for fixed line services, the sale of data services over fixed broadband is often more simple than in mobile, particularly as 'unlimited data' offerings are now common place in fixed broadband, whereas set allowances and out of bundle charges are still common amongst mobile tariffs. For these reasons, the expansion of TMBS approval to include data services is proportionate for mobile services, but should remain a voluntary option for fixed line data services.

The proposed extension of GC11.2 to data services as well as voice services necessitates considerable engineering work, time and investment on the part of CPs. In light of that, Ofcom's proposed implementation period of 3 – 6 months is far too short for CPs to carry out the necessary work and to undergo the certification process. The period allowed for compliance should be extended to 24 months in accordance with the accrediation timeframe mandated within the Metering and Billing Directive (2014).

Access to Billing Information

Vodafone notes that Ofcom proposes to modify GC12 which currently allows CPs to charge customers a reasonable fee for providing a basic level of itemised billing, so that the revised obligation will be to provide subscribers with access to adequate billing information to enable them to monitor their expenditure at no charge. Vodafone has two main concerns with these proposals. First, while Vodafone accepts that this may be reasonable in relation to domestic customers, it should not be extended to corporate customers. Some corporate customers have very different and complex requirements for itemised bills when compared with domestic customers. Some corporate clients require itemised bills in various configurations for different services across multiple sites for separate divisions of their business. Naturally, considerable work can be involved in producing such bills and corporate customers are very happy to pay CPs for these advanced analytical services because of the considerable benefit they derive from them. Consequently, Vodafone would like to see Ofcom's changes to GC12 limited to basic itemised billing for domestic and small business customers, so that CPs are still permitted to charge customers for more advanced analysis and breakdowns of their bills, and for corporate customers to be expressly excluded.

Secondly, in relation to providing customers with a means of monitoring their expenditure at no charge, Vodafone is concerned that this will require engineering resources and time to develop, test and deploy suitable functionality in its billing systems and apps – particularly as it must deal with voice and data services and the non itemisation of zero-rated SMS. Vodafone believes that Ofcom has underestimated the amount of work involved in this regard (at paragraph 6.35 of the consultation, Ofcom says: "[w]e estimate that mandating "access to adequate billing information" [...] and extending this requirement to the provision of data services [...] would not impose any significant costs on industry.") Vodafone believes that this statement does not take proper account of the true extent of the work that CPs would need to undertake. Accordingly, Vodafone would like to see the proposed implementation period to be doubled to 12 months.

Non-Itemisation of Free Calls and SMS

Vodafone is supportive of extending the current requirement to include SMS as well as calls and of removing such services from records showing consumption data. However, expanding the remit to SMS will require techical scoping and build time, so a period of 12 months for implementation will be required.

Question 11: Do you consider that our proposed revised condition for complaints handling and access to alternative dispute resolution, together with our proposed revised code of practice on complaints handling, will improve the transparency, accessibility and effectiveness of communications providers' complaints handling procedures, and improve access to alternative disupte resolution? If not, please give reasons, including alternative suggestions.

Complaint handling at heart is a straight-forward process consisting of three key elements:

1) Capture the complaint
2) Manage the complaint

3) Resolve the complaint to the customer's satisfaction (or refer to ADR if this is not possible)

In an outcomes based approach those three steps are all that would be required to ensure that an effective process is put in place by CPs; reinforced by enforcement action if required.

Ofcom however is proposing a prescriptive level of micro-management which, whilst it will have some benefit to consumers and is described as raising standards, appears to owe as much to Ofcom's enforcement capabilities than it does to reinforcing the outcome of complaint management. Even the engagement with the fundamental question upon which any complaints process is based and which Ofcom itself acknowledges to be subjective i.e. "what is a complaint?" has disappointingly been avoided in lieu of a recommendation that improvements can be made through frontline training. This is directly juxtaposed with granular requirements set out for closing said complaint and is a missed opportunity constituting as it does the most fundamental aspect of the process.

Vodafone is also disappointed that Ofcom has not given more weight to the outcomes of its recent investigatory work and to the role that competition plays in relation to delivering the lifecycle of a complaint. The overall strength of a CP's complaints handling process can be one of the key differentiators between market players, and Vodafone is surprised that Ofcom has not sought to harness competitive pressures with the transparency remedy it already utilises through its Telecoms and Pay-TV complaints data rather than micro managing a heavily prescriptive process. All CPs have strong incentives to handle complaints in the most efficient and effective manner to ensure customer loyalty and retention.

It is not helpful to substitute the current requirement for the customer to request a deadlock letter for an obligation on the CP to issue when it believes the customer regards the situation to have reached deadlock. CPs should be allowed the flexibility to determine their own approach, in conjunction with the customer. The acceptance or rejection by a customer of a CP's proposal to resolve the complaint typically dictates when a situation has reached deadlock and Vodafone is proactive in issuing deadlock letters where required.. The proposed requirement however may require CPs to pre-empt the customer's decision or interpret their intentions – which may be incorrect. Such an action is unlikely to be conducive to the efficient resolution of a customer complaint. Further, issuing a deadlock letter while a customer is still considering their position may, from the customer's perspective, appear overly aggressive.

Vodafone has introduced a number of initiatives and improvements in this area over recent months which compare favourably with Ofcom's new minimum standards. There are however some concerns about the efficacy of the ADR process and whether an acceptable end to end customer experience can be maintained. Ofcom proposes multiple sign-posting stages during the process advertising a customer's right to ADR if a complaint is unresolved. Similarly it intends to oblige the CP to issue deadlock letters proactively if resolution cannot be reached. All of which will increase the volume of complaints reaching ADR. The effectiveness of increased

signposting to the customer however is entirely dependent on the Ombudsman's ability to cope with the increased volumes. Recent experience would suggest that there is not enough capacity in this vital element of the process to cope with such an increase. Unless Ofcom can be assured as part of its upcoming ADR Review that increased volumes of cases can be dealt with in a timely manner, Vodafone suggests a staggered introduction over time to the additional sign-posting requirements.

Question 12: Do you have any other comments on our proposals in relation to complaints handling and access to alternative dispute resolution?

As detailed above, Ofcom must ensure that CPs are permitted to decide the format of the proactive notification to customers. CPs are best placed to decide how to communicate with their customers, and this is likely to vary between CPs given the diverse nature of each CPs customer base.

Question 13: Do you agree with our proposals in relation to the codes of practice that communications providers are currently required to establish, maintain and comply with, including replacing these with direct obligations to make information available where appropriate?

Vodafone is fully supportive of streamlining the codes of practice to, where possible, move the code requirements into the conditions themselves.

Other Information for Customers

Vodafone notes that Ofcom proposes to remove the information requirements which are currently set out in paragraph 14 of Annex, on the basis of the requirement to be subsumed under GC 20. Whilst in principle that sounds reasonable, Vodafone refers Ofcom to its response to the first GC Review. Vodafone does not agree with any extension of the requirement to provide access to a Directory Enquiry Service with any suggestion of an any-to-any obligation.

Question 14: Do you agree with our proposals to introduce a new requirement for communications providers to take account of, and have procedures to meet, the needs of consumers whose circumstances may make them vulnerable?

In principle, Vodafone is supportive of requiring CPs to take account of the needs of vulnerable customers. However, Vodafone is concerned that the proposals, as laid out within the consultation document, are contradictory and risk failing the legal threshold of proportionality.

Vodafone fully acknowledges that circumstances beyond disability can make customers vulnerable; the most pertinent being those suffering from serious illness or financial difficulty. Vodafone has a long history of dealing with customers in these scenarios and already has processes that cater for such customers. For this reason, Vodafone welcomes Ofcom's comments at 9.14 of the consultation, stating that 'instead of imposing detailed, specific

requirements', Ofcom would oblige providers to detail, 'clear and effective policies and procedures' for the '[...] fair treatment of vulnerable consumers'.

As a point of reference, on 10 June 2016, Vodafone wrote to Ofcom to set out its definition, and approach to handling, vulnerable customers. Rather than pigeon-holing customers into defined segments, this approach commits Vodafone to a broad training programme that supports customer agents in catering to a customer's specific needs.

It is then with dismay that Vodafone reads section 9.15, which sets out that such 'policies must include, as a minimum...' and go on to establish a broad definition of 'vulnerable' customers, including those suffering from poor literacy and the recently divorced. Such broad definitions would capture extremely large numbers of customers unless such information was regularly refreshed, which as an activity in itself would be at best a nuisance to customers and at worst extremely intrusive. Such a broad, prescriptive definition is then contrary to the perceived intent of paragraph 9.14, that, Vodafone hoped, looked to CPs to assess what would be best for their customers.

Further, whilst Ofcom may assume that such detail could be easily added to account notes, this would not suffice if the requirement was to ensure that, for example, a subset of vulnerable customers automatically receive larger font bills.

Question 15: Do you agree with our proposals to update regulation by extending the current protections for end-users with disabilities, which currently apply only in relation to telephony services, to all public electronic communications services?

Vodafone is supportive of this approach.

Question 17: Do you agree with our proposal to remove the condition relating to the provision of tone-dialling? Please give reasons for your views.

Vodafone gives its qualified support to Ofcom's proposal to remove the condition. Tone dialling is a given in modern networks, but the current GC16 is intended to similarly mandate the usage of Dual Tone Multi Frequency (DTMF) *within* calls, as well as to *make* a call. It is perhaps unfortunate timing that at a period where support of in-call DTMF is in jeopardy, Ofcom should choose to remove the regulatory underpinning. As networks migrate to IP technology, operators are having to go to considerable lengths to seek to maintain operation of voice-band data, such as fax, fire/burglar alarms, social alarms and at the extreme DTMF. Vodafone's view is any responsible operator will treat the functioning of DTMF as a commercial imperative – hence we support removing the regulatory requirement, but we do note that it may be misinterpreted by some as Ofcom believing support is no longer required.

Question 18: Do you agree with the changes we are proposing to make in relation to the provision of calling line identification facilities, including the new requirements we are proposing to add? Please give reasons for your views.

Carriage of reliable CLI is essential to trusted operation of telephony services; both Presentation Number to allow end-users to know who is calling them, and Network Number to allow the origin of calls to be traced. Regrettably, this capability has broken down over the last few years. The UK is facing a crisis of nuisance marketing calls to the degree that many fixed line customers will no longer answer their phone unless they recognise the CLI.

As Ofcom is aware, Vodafone is blocking some two million nuisance marketing calls to our mobile customer base every day, and over half of the numbers concerned are where the CLI is not valid. Insofar that our controls operate upon Network Numbers, this implies that network operators – either UK or overseas – are complicit in generating these calls. Whilst there are things that can be done to improve the wording of the regulatory requirements for CLI, it is inescapable that significant progress could be made by enforcing the existing rules. Operators are placing calls with false Network Numbers and Ofcom should be investigating who is doing this.

Nevertheless, Ofcom needs to be careful not to introduce measures which are too draconian. It is essential for enterprise customers to be able to supply CLIs that will be used for presentation purposes. This has always been the case where for example call-centres place outbound calls on behalf of a series of clients, or the return number for the call-centre varies according to why the call was being placed (hence avoiding the need for the called party to navigate through IVR interactions to get back to the relevant team in the call-centre). However, as legacy enterprise customer PBXs are replaced by IP solutions, the need for Types 3-5 Presentation Numbers is rapidly increasing; whereas historically each site in a corporate network would have a breakout into the public network, the norm with corporate IP networks is to have only one or two central breakout "SIP trunks". If we are to avoid the situation where the CLI presented for display purposes represents those central SIP trunks, it is essential that corporate networks be able to pass a Presentation Number to be used for return calls that represents the individual site/extension that originated the call.

Against this backdrop, Vodafone supports what Ofcom is seeking to achieve, that being framing the new GC C7 around the ultimate goal of reliable CLIs being carried end-to-end, with associated guidance informing operators of what is expected at a given moment in time as technology progresses.

In this context, GC7.4 should certainly have a "subject to technical/economic feasibility" modifier because absent this the implication is that once it comes into force originating operators must ensure every Presentation Number CLI is correct using technical means on a call-by-call basis. To do this originating networks would need to screen Type 3-5 Presentation Numbers against a whitelist (rejecting any calls that fail screening). Constructing such a whitelist would be impracticable for enterprise networks that can serve many hundreds of individual sites and thousands of terminals. Additionally, such an approach would prohibit, , for example, any break-in/break-out calls, or calls diverted by customer equipment since inherently the CLIs associated with these is not known in advance so cannot be put in said whitelist. Not only would Ofcom be demanding something which isn't technically feasible with existing generation equipment or operationally feasible given the complexity of some corporate customer estates, it would be arbitrarily banning capabilities which have been valued by customers for many years.

Vodafone does not believe that this is Ofcom's intent. Rather, we read Ofcom's intent to be an evolutionary rather than revolutionary approach. Together with the technical-feasibility modifier, we would expect associated Guidance to state that at present originating operators would fulfil the obligations of GC7.4 so long as they rigorously collect contractual undertakings from enterprises to only transmit valid CLIs which they have the right to use (as set out in the Annex to the existing CLI Guidelines).

Further, the Guidance for transit and terminating operators would state that at present they would fulfil the obligations of GC7.4 so long as their interconnect agreements demand valid CLIs from upstream networks.

In time, the Guidance could be updated, probably in a forward-looking manner to allow network operators to implement technologies in a timely/gradual manner. For example, NICC Standards is studying the costs and benefits of introducing IETF STIR technology to UK networks, with originating networks (and possibly even corporate customers) digitally signing CLIs and terminating networks then validating the authenticity of the CLI data based upon that signature. In the event of a conclusion by Ofcom that STIR implementation would be beneficial and justifies the costs, we'd anticipate the Guidance to be updated to provide criteria (either time or technically capable) of when Ofcom expects implementation.

However, the problem with GC7 at present is it provides the end-game situation of demanding that all CLIs be valid, without providing the underlying Guidance. Vodafone does not support and cannot accept this approach of effectively signing a blank cheque, without first having the opportunity to contribute to writing the first version of that Guidance. Ofcom could and should have issued a draft of the CLI Guidance with this consultation, but chose not to do so. Therefore, Vodafone must insist that the implementation of this new GC7 is stayed until such a time that the associated Guidance has been agreed by stakeholders.

The proposed GC7.6, covering call blocking, does contain the all-important "technically feasible" clause, but there are flaws in its operation;

1. Once again, Guidance is needed as to what Ofcom considers to be technically feasible;
2. There are technical reasons why CLI is lost in networks, particularly on internationally originated calls; in some cases delivery of the call without CLI is preferable to failing the call, but the proposed wording precludes this;
3. The wording implies that call-blocking is the only solution. Some customers may prefer to have the calls delivered but with some form of indication that the CLI is unreliable;
4. There does not appear to have been any thought given to the linkage with GC20.1 (as currently numbered), which mandates that network operators connect calls to all European non-geographic numbers[5]. As such, if an operator receives a call to a non-geographic number containing an invalid CLI, it will be impossible to avoid being in breach of the General Conditions – connect the call and GC C7.6 is breached, or do not

[5] In our response to the first phase of Ofcom's consultation on the General Conditions of Entitlement, Vodafone voiced misgivings about the operation of the revised GC20, see https://www.ofcom.org.uk/__data/assets/pdf_file/0017/94103/Vodafone.pdf pp17-20.

connect the call and GC20.1 is breached. We are sure that Ofcom's intent is that GC C7 will take precedent, but it would be helpful if the General Conditions didn't contradict one another.

Q19: Do you have any comments on our proposals in relation to the proposed revised general condition on switching?

Vodafone will continue to work closely with Ofcom in its ongoing assessment of cross-platform and mobile switching. Vodafone welcomes Ofcom's continued commitment to looking to industry to deliver a 'fixed number portability' solution and agrees that at least in the first instance, the onus remains on industry to reach consensus on delivery.

Question 20: Do you agree with our proposal to remove the current provision which expressly prohibits so-called 'reactive save' activity (in GC 22.15)?

Vodafone strongly opposes the removal on the prohibition of 'reactive save' activity within the current fixed line switching process. It is Vodafone's stongly held view that such a prohibition ensures that 'cancel own' services are not over-used to the detriment of smaller providers, and protects consumers who do not want to receive marketing messaging once they have indicated that they wish to leave their current provider.

Ofcom evidences the proposal on the basis that 'consumer experience [is] mixed in regards to contact with their old provider [... and] some consumers actively look to benefit from contacting their current provider where this leads to a better deal and mutual satisfaction'. Yet Ofcom goes on to comment that, 'we remain concerned about reactive save discussions when they are unwanted [...] and which make the switching experience more difficult'. These positions are oxymoronic; Ofcom appears to support allowing Losing Providers to conduct reactive save activity on the grounds that some customers seek to benefit from contacting their current provider, yet openly acknowledge that such activity can cause harm via complicating the switching process.

Vodafone's view is that the current prohibition does not prohibit customers from contacting their current provider, they are permitted to do this at any point within the switching process. Rather, the current prohibition stops the Losing Provider from initiating the 'reactive save' conversation. The current scenario then offers the best of both worlds; customers that want to benefit from contacting their Losing Provider are permitted to do so, yet customers that do not are not exposed to unwanted marketing messaging. The concerns that Ofcom points to justify the proposal are then better served by the current switching arrangements.

Given the above, Ofcom may then wish to amend the proposed wording within GC 22 to clarify that customers are permitted to contact to current provider at any time during the switching process, but do not need to.

Further, the technical make up of the fixed line switching service requires a prohibition on reactive save in order to protect smaller providers. In the current model, there are two means by which a switch is cancelled (when taking place over the Openreach or KCOM networks):

1. The losing provider "cancel others" the order. E.g. customer is currently with provider X, but places an order with provider Y. Part way through, they decide that they want to remain with provider X, and gets X to cancel the order.

2. The gaining provider "cancels own" on the order. E.g. customer is currently with provider X, places order with provider Y. Part way through, they decide they want to remain with provider X, so contact provider Y to get them to cancel their order.

Whilst Openreach/KCOM cannot levy a charge for scenario 1, they can against the gaining provider in scenario 2. Whilst charges will depend on the product, as an indicator, for FTTC the 'cancel own' charge currently stands at £11.25. These charges then result in the gaining provider incurring cost for the directly correlated reactive save activity of the losing provider within the switching process. Of course, some of this cost may be off-set by the majority of cancellations taking place through the losing provider utilising 'cancel other'. However, it is undeniable that by permitting reactive save activity, the propensity for cancellations within the switching process will increase. This will disproportonately impact smaller provides seeking to gain market share, as these providers have a higher propensity to be gaining providers. The proposed change would then be detrimental to competition and would be likely to fail the legal threshold of proportionality.