

Comments on Protecting consumers from mis-selling of mobile telecommunications services.	
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Response to Anne Hoitink	
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This response represents a consensus view of the East of England Trading Standards Association Limited (EETSA) members to the consultation paper on Protecting consumers from mis-selling of mobile telecommunications services. It does not necessarily reflect the opinions of the employing authorities.

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Q1: Other options to tackle mis-selling.

- Ensure that there is a common understanding of how distance selling rules apply to mobile phone contracts, in particular where the supply of the phone and the airtime are linked. (LACORS view is set out in the attached document).
- Ofcom proactively to share intelligence with TS services (i.e. by informing HA TS services of complaints received).
- More use of Fraud legislation, Enterprise Act enforcement and the new Consumer Protection Regs.

Q2:

Ofcom's preferred option appears not to go significantly beyond what is already required in law. However, it appears to transfer the responsibility for enforcing the legal provisions onto the MNOs and away from the enforcers.

Q3:

A further option would be to require disclosure of the amount of commission at the point of sale. This would be completed on both copies of the airtime contract document -- much as is the case with commission disclosure on financial products. Commission disclosure improves transparency, and is more likely to make unsustainable cashback offers obvious to the consumer. The commission disclosure box could be accompanied by a health warning such as 'The retailer may agree to rebate part of their commission to you by way of cashback or other incentives.' to make it even more obvious to the consumer that a high level of incentive is unaffordable and unsustainable.

Q4:

The preferred option does nothing more than the law already requires, and it is unlikely to lead to any improvement. The Consumer Protection regs which come into force in May 2008 will require full disclosure of the details as proposed in the GC (and non-disclosure already has the effect that the terms are not incorporated into the contract and are therefore unenforceable). The Unfair Terms regulations already prohibit the use of unduly restrictive terms.

Our preferred approach would be to impose a direct requirement that MNO's guarantee/underwrite retailers' cashback and incentive deals. This is not unduly onerous, as the incentives are already paid for through the commissions paid by MNO's. The effect would be that MNO's would probably:

- focus more on due diligence in respect of retailers
- monitor incentive terms and information disclosure more closely
- modify the commission structure and time of payment, so as to mitigate risk
- introducing automated cashback schemes
- introduce schemes where MNO's pay cashback direct (as is sometimes the case with cashback on financial products such as investments)
- require cashback to be paid earlier in the deal

That is, the effect of requiring a guarantee from MNO's is that most of Ofcom's other proposals would fall into place as MNO's seek to mitigate their risk.

Other proposals are more likely to be anti-competitive as they provide little disincentive for rogue retailers and only a weak incentive for MNOs to prevent rogue retailers operating. Rogue retailers gain an unfair competitive advantage over reputable retailers, as their headline offers are always -- on the face of it -- very competitive, and it is only later on that the consumer realises that they are the victim of a fraud.

It is noted that, although MNOs have apparently said that it would be too expensive to alter their systems to facilitate direct cashback payments, no evidence has been published in support of this contention. It is suggested that direct cashback arrangements could easily be communicated by retailers to MNOs when a contract is set up (after all, they manage to pass on the consumer's name, address and bank details perfectly adequately) and that cashback can then be applied as a straightforward adjustment on bills.

It is also worth noting that, despite the standard contract terms of the MNO's and despite legal opinions which appear to be based on those written terms, the reality is that MNO's are already liable for cashback in a significant number of cases (i.e. where the retailer has, within the scope of their ostensible authority as agent, offered cashback which the consumer reasonably infers to be linked to the airtime agreement).

Q5

No comments

Q6

No, the proposals are again, effectively a proposal not to regulate. MNO's should already (for various reasons) be doing 'due diligence' in respect of retailers. The fact is that due

diligence will often fail to identify rogues who are either new to the marketplace or who conceal their history effectively.

Trading Standards services will generally be unable to respond to MNOs' requests for information about trader history, even where they hold this information, due to the restrictions under Pt9 of the Enterprise Act 2002.

The preferred approach, as above, is to require MNOs to guarantee cashbacks/incentives. This can really be the only effective approach to regulation.

In addition, this approach would be the best way to promote fair competition in the market, as it would be by far the most effective way of squeezing out the rogues. This is because the potential financial liability on the MNOs would focus their efforts and diligence much more effectively. If the requirement is merely 'due diligence', then the effect will be that the due diligence systems will look adequate on paper, but there will still be rogues or failures despite this. If the requirement is a guarantee, the 'due diligence' will not only look good on paper, it is also likely to be highly effective.

Reputable and legitimate retailers will not be squeezed out of the market -- if MNOs did not see any advantage in using those sales channels, then they would already be few and far between. Independent retailers would only all be forced out of the market by MNOs having to guarantee their incentives, if all such retailers are offering unsustainable, misleading or illegal offers in the first place.

Q7.

Record-keeping: the consultation document states that many deals now apply to 18-month contracts. Therefore a 12-month retention period is likely to be inadequate.

Confirmation letters are already required by distance selling regulations, so it is unclear why an almost identical requirement should be included in the GC. The problem is that, in many cases, distance selling regulations are not complied with.

There should be no cost to implement the 'confirmation letter' proposal for those retailers who already comply with the law.

(Response submitted by EETSA Specialist)

If you have any queries or would like any further information regarding the EETSA response to this consultation, please contact

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