

Protecting consumers from mis-selling of mobile telecommunications services

BT's response to Ofcom's proposals

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Executive summary

BT welcomes any reasonable proposals which protect domestic and small businesses customers from all forms of mis-selling. Indeed, we have actively supported all Ofcom and industry efforts to ensure that adequate consumer protection measures are in place for the selling and marketing of fixed services and we certainly encourage the same types of protections for the mobile sector. However, in order to ensure the optimum level of customer protection, any regulation needs to be clear and unambiguous in terms of what is required of all parties to which the regulation applies, and it needs to be workable. In our opinion, Ofcom's proposals meet these standards in many respects but fall short with respect to others. We are pleased to have the opportunity to highlight these concerns, which are as follows:

- the framing of the General Condition and that of the Consultation Document may not be fully aligned;
- the proposed two-month period for implementation is too short; and
- the level of monitoring and reporting appears to be too onerous.

The first three sections of this response expand respectively on these concerns. Our answers to Ofcom's Consultation Questions, together with commentary on some of the specific provisions in the draft Condition (notably in relation to the telesales proposals), can be found in section 4.

1. The proposed General Condition

The proposed new General Condition 23 needs to be framed as precisely as possible and provide the level of consumer protection, and have the scope, that Ofcom intends. BT's reading of the draft Condition (in Annex 6) suggests that it does not fully do either. In particular, the proposed wording of the General Condition is capable of being interpreted as applying to not just the mobile airtime subscription services provided by MNOs and MNVOs, but other types of wireless services as well (for example WiFi). There is no indication in the Consultation Document that this was Ofcom's intention, nor does there appear to be any suggestion (let alone evidence) put forward that mis-selling is a problem in this part of the sector.

1.1 Services captured

The current Code of Practice (as set out in Annex 8 of the Consultation Document) is limited to its Mobile Network Operator (MNO) signatories and applies to the "mobile services" they promote and sell, namely "mobile airtime subscriptions, including pre-pay airtime" (see A8.3 of Annex 8). The definition of "Mobile Service" in the proposed General Condition (which is the same as the definition in the National Telephone Numbering Plan) appears to extend beyond mobile airtime subscription services, capturing all services that consist of the conveyance of signals by means of electronic communications network and through wireless telegraphy or apparatus designed or adapted to be capable of being used while in motion. "Wireless Telegraphy" is defined in the Communications Act as referring to wireless frequencies not exceeding 3,000 gigahertz.

This definition of "Mobile Service" therefore appears to capture all conveyance services using radio spectrum of less than 3,000 gigahertz which are sold to domestic or small business customers. This could include WiFi and any other services that the winning bidders in all Ofcom's forthcoming spectrum auctions might choose to provide. If this was Ofcom's intention, this is not obvious from the Consultation Document, which gives the impression (in paragraph A7.7 and the Glossary in particular) that the new General Condition applies only to services provided by MNOs and MNVOs. Specifically, the definition of MNO in the Glossary refers only to the five MNOs and the definition of MNVO refers to providers of mobile *telephony* services which are not allocated spectrum. The consequence of extending to services such as WiFi, which in many cases are not provided by MNOs or MNVOs but by broadband providers, is that these broadband providers would need to incorporate the mobile mis-selling rules into their broadband marketing processes. If this was Ofcom's intention, this should have been more clearly set out in the Consultation Document in order to give affected

operators and potential operators an opportunity to consider the implications.

1.2 'Mobile Virtual Network Operators'

The Consultation Document is also not clear on the intended scope of the definition of "Mobile Network Virtual Operator" (more commonly rendered as "Mobile Virtual Network Operator"). The Glossary (Annex 10) defines MNVOs as organisations providing mobile telephony services to customers without being allocated spectrum. The Glossary cites Virgin and Fresh as examples, but it is not clear what distinguishes these providers from other mobile providers which, for example, purchase wholesale mobile minutes and resell these to end-users under their brand name. Moreover, it is unclear whether a company (such as *Virgin* or indeed *BT*) which may hold a spectrum allocation in a wholly unrelated context and supplies mobile telephony services, is captured by the MNO and/or MNVO definitions in the Glossary. There may also be operators which use unlicensed spectrum to provide services, but which act in all other respects like MVNOs, such as *Virgin* or *Fresh*. These ambiguities result in large part because the Glossary definitions of "MNO" and "MNVO" in Annex 10 do not appear in the General Condition and, in fact, appear to be more restrictive than the definitions of "Mobile Services" and "Mobile Service Provider" in the General Condition – see 1.1 above.

It seems to us that any MNVO definition needs to be more detailed and might need to contemplate concepts such as airtime, SIM cards, mobile network codes, mobile switching centres and/or interconnection agreements, with a resulting need for further definitions. That is, it might need to define MNVOs by what they are, do, or possess, rather than simply by what they do not possess. Any definition of MNVO will need to be precise, but at the same time flexible enough to adapt to evolving business models. It also may need to consider the requirement from a customer's perspective – customers are likely to view a mobile service provider as simply an organisation that is providing mobile services to them. If Ofcom's primary concern is to address the existing mis-selling problems by strengthening and augmenting the provisions in the existing MNO Code of Practice, it may be more effective to do this by applying the General Condition solely to MNOs. An MNO can be very clearly defined by reference to the existing definitions that appear in the relevant General Conditions and Notification Schedules (for example 'Communications Provider' and 'Electronic Communications Network'), with any necessary qualification relating to mobility (perhaps using 'Wireless Telegraphy' as the starting point). All other providers in the mobile market cannot generally operate except as downstream players with a contractual relationship to one or more MNO, and thus the requirements of the General Condition will be carried throughout the supply chain. This might best be achieved by adapting the definition of "Mobile Service Retailer" to cater for all these downstream players.

1.3 Wireless Services

As we have said above, the encompassing of services such as WiFi in the proposed mis-selling rules (if this was indeed Ofcom's intention) was not made at all clear in the consultation document. There was certainly no account of the type of mis-selling problem Ofcom perceives in this part of the mobile sector - and we are unaware of any particular issue. The way WiFi and similar services are sold is usually quite different from the selling of traditional mass-market services associated with a mobile phone. We do not believe a case has been made for the applicability of the draft condition to services other than traditional mobile services, and it would, accordingly, be an undue burden on services that are only in the early stages of development and marketing. Given this uncertainty of Ofcom's intentions, and the absence of evidence, we have not been able to analyse the likely impact of the proposed rules on our channels and processes through which these types of services are sold. The remainder of this response excludes any consideration of the implications for WiFi and related products and services. However, if Ofcom is able to clarify its proposals in relation to the services/suppliers affected (and/or correct BT's interpretation), we would welcome the opportunity to engage further prior to the publication of the Statement planned for July. We suspect that others in this part of the sector would also wish to do so, many of whom may not have considered they were affected at all.

2. The implementation period

BT's top-line assessment of the likely operational requirements of the proposed Condition, should it be classified as a Mobile Service Provider, suggests that two months would be a very challenging period in which to implement the necessary systems and processes. Unlike the MNOs, BT has hitherto not been required to put in place any specific processes, voluntary or otherwise (and we are not aware of any particular complaints about BT or its agents). We know from our experience of other newly-mandated regulations, such as the recent EU roaming regulation, that the extent of work, and associated cost, required turns out to be greater than that initially contemplated. This has resource implications, particularly for MVNOs whose resource pools and margins are significantly smaller than those of MNOs, with possible knock-on effects to general customer service levels during the implementation period. In BT's case, our channels to the consumer and (particularly) to the small business market, are many and varied, meaning implementation is far from simple and straightforward.

3. The monitoring requirements

Ofcom's view is that complying with the proposed Condition should not create significant additional costs for those mobile service providers and independent retailers already complying with the voluntary code. We would like to point out that the voluntary code was not applied to, nor discussed with, BT and therefore that any costs in implementing are likely to be additional costs in BT's case should it be classified as a Mobile Service Provider. As such, and given that the MNOs are in a better position to assess and comment on the potential costs of the new rules, we would welcome an Ofcom-facilitated consultation on the monitoring, record-keeping and reporting proposals. BT's experience of the EU mobile roaming regulation has been that those requirements were relatively more demanding on MVNOs, and in general, the audit and compliance-assurance requirements appear likely to add further costs. As they stand, the proposals appear somewhat onerous, but it may be that they are achievable given more time to implement.

That said, any obligations set out in General Conditions are only as effective as the enforcement action Ofcom takes. The proposed monitoring, record-keeping and reporting requirements are a welcome indication of Ofcom's intentions in this respect, which we trust will afford domestic and small business customers the expected level of protection.

4. The Consultation questions

Question 1: Do you consider there are other options to tackle mis-selling in the mobile market we have not identified in our review?

- No. However, we would expect Ofcom to take into account the parallel work it is currently undertaking in relation to migrations and mis-selling in the fixed sector, and aim to achieve consistency between the two sets of proposals.

Question 2: Do you agree with our preferred option to tackle mis-selling? If not, please explain your preferred approach and reasons.

- See our foregoing comments.

Question 3: Do you consider there are other options to tackle issues with onerous/misleading cashback terms and conditions we have not identified in our review?

- No.

Question 4: Do you agree with our preferred option to tackle onerous/misleading cashback terms and conditions? If not, please explain your preferred approach and reasons.

- Yes.

Question 5: Do you consider there are other options to tackle issues with retailer insolvency we have not identified in our review?

- No.

Question 6: Do you agree with our preferred option to tackle retailer insolvency? If not, please explain your preferred approach and reasons.

- Yes.

Question 7: views on the proposals set out in Section 9 of the Consultation:

• *Could you give an indication of the costs of keeping records for an additional 6 months?*

- Extended retention is likely to be less of an issue than establishing the records in the first place. Please see our foregoing comments.

• *Do you think a confirmation letter would help in tackling mis-selling and cashback issues?*

- Yes. Where the risk of mis-selling arises from a customer migration process, we believe consumers should benefit from a pan-industry process that keeps them informed, protects their interests, and gets them to where they want to be. It is not clear what Ofcom intends the letter to address in relation to 'slamming', but it may be that further measures need to be contemplated – such as text alerts in addition to a letter, and the involvement of the existing service provider.

• *What kind of information do you think such a letter should contain for it to be effective?*

- The nature of the information will act as much as a disincentive on providers to engage in mis-selling as it will as a partial safeguard for customers. It should therefore be based on Ofcom's own experience of the complaints it has had to deal with and include all key information which mis-sellers may be reluctant to provide.

• *For retailers selling services via telesales could you give us an indication of costs and time to implement this proposal?*

- The requirements of draft Condition 23.5(c) are too detailed to cover reasonably during a telephone sales exchange and are likely to detract from the customer experience. It would be sufficient for the sales agent to state the nature of, or list, the information that will be included in the written advice to be received within three days.

• *Could you give an indication of costs and the feasibility of the due diligence requirements, including the requirement where we propose all current independent retailers to be checked within 12 months from the GC coming into force?*

- No.

• *Could you give us your views on the proposed transition period of 2 months to implement the provisions of the GC?*

- Our view, as stated earlier in this response, is that this period is too short.



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