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Dear Ms Hoytink

Thank you for the opportunity to respond to Ofcom's consultation document on mis-selling of mobile telecommunications services.

Mobile telephone issues, including mobile mis-selling, are clearly of concern to consumers and feature highly in Consumer Direct data. In the latest report from Consumer Direct Phones 4 U Limited and Carphone Warehouse both placed in the top 5 traders most contacts were received about. We note your own analysis of Consumer Direct data estimates that around 6000 complaints relating to mis-selling and cashback deals were received between January and October 2007.

Local Trading Standards Services are also very concerned about the issue of mobile mis-selling, and in particular bad cashback deals involving independent retailers which leave consumers tied into expensive contracts.

The three areas the consultation identifies as requiring attention to sufficiently protect consumers are general mis-selling, onerous/misleading cashback terms and conditions and retailer insolvency. The first question you ask about each area is whether there are any other options to tackle them that the review does not highlight. The second question asked is whether we agree with your preferred option. Our views on these questions are



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listed below under the appropriate headings. We have not addressed question 7 of your consultation as this appears to be aimed at network operators or retailers.

Do you consider there are other options to tackle general mis-selling, onerous/misleading cashback terms and conditions and retailer insolvency in the mobile market we have not identified in our review?

Your review has been very thorough in identifying options for addressing the relevant matters. Given the limited resources available and the limitations on existing consumer safeguards we do not consider there are other options available to tackle these issues.

Do you agree with our preferred options to tackle general mis-selling, onerous/misleading cashback terms and conditions and retailer insolvency in the mobile market? If not please explain your preferred approach and reasons.

General Mis-selling

Your preferred option for tackling this issue is to implement a new General Condition (GC) broadly based on the existing code of practice (the code). Given the code has not had the desired effect of reducing complaint numbers and the shortcomings you have identified in using existing consumer protection legislation in these particular circumstances the GC option would appear to be the most appropriate. However there are circumstances in which existing consumer protection legislation, enforced under the Enterprise Act 2002 (EA02), provides Ofcom with an important tool for tackling problem traders. For example, in extreme cases where traders persistently engage in mis-selling under a number of guises (Phoenixing) their behaviour may be controlled through the acquisition of undertakings which are binding on individuals (company officers and in certain circumstances shareholders) as well as businesses. This method of enforcement also allows Ofcom to tackle independent retailers directly and should be considered where appropriate.

Onerous/Misleading Cashback Terms and Conditions

Your preferred option for tackling this issue is to introduce a new GC which will combine a set of rules on sales incentives, such as cashback and an obligation to provide information at the point of sale. As with the general mis-selling issue above the voluntary code of practice has not had the desired effect and shortcomings with existing consumer protection legislation mean these options are not appropriate. Furthermore you believe the option of introducing a consumer education campaign would be difficult to target effectively and would not address the cause of "bad cashback". We agree that your

preferred options should ensure that consumers are provided with clear unambiguous advice about sales incentives and company offering them, and ensure that terms and conditions attached to these deals are not unduly restrictive. Given the shortcomings of the other options identified this would appear to be the most appropriate. As with general mis-selling I would again advise Ofcom that the use of existing consumer protection legislation, when necessary, provides an important method of regulating the activities of certain problem traders and should be considered in the appropriate circumstances.

Retailer Insolvency

As with general mis-selling and onerous/misleading cashback terms and conditions your preferred option here is to introduce a GC. The GC will formalise existing requirements for service providers to carry out due diligence on retailers. This formalisation will allow you to address problems with due diligence and will, we hope, provide an incentive for providers to ensure due diligence is carried out effectively resulting in fewer "bad cashback" deals leading to trader insolvency. Given the current code has not addressed this problem adequately and the problems identified with the other options this appears to be the most appropriate alternative for tackling the problem.

Whilst we welcome the imposition of the new GC's we would like to emphasise the importance of active monitoring and enforcement of the conditions and suggest a review of complaint trends a year after implementation.

Thank you once again for the opportunity for OFT's Consumer Protection Group to respond to you consultation document. Should you wish to discuss our response please don't hesitate to get in touch.

Yours sincerely



Tim Luckhurst

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Markets and Projects