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## Helping consumers get better deals

### Statement on end-of-contract notifications and annual best tariff information

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NON-CONFIDENTIAL VERSION

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**STATEMENT:**

Publication date: 15 May 2019

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# 1. Overview

Ofcom strongly believes customers should get a fair deal for their communication services. We want customers to be able to take advantage of the wide choice of services available and shop around with confidence, so that they can get the best deals for their needs. To help customers to do this, we are imposing new requirements on providers to send important information to their customers when their contracts are coming to an end and on a regular basis after that.

## What we have decided – in brief

**Broadband, mobile, home phone and pay TV companies must notify their residential and business customers when their minimum contract period is coming to an end.**<sup>1</sup> Residential customers will receive a standalone notification between 10 and 40 days before the end of their contract. The notification will include the date the minimum contract period ends; the services currently provided and the price paid; any changes to the service and price paid at the end of this period; and information about the notice period required to terminate the contract. Business customers will also receive a notification to inform them of the end of their minimum contract period and how they may terminate the contract.

**These notifications will tell residential customers about the best tariffs available from their provider.** They will include at least one SIM-only deal for people who bundle the cost of a mobile handset with their airtime. They will also include information on prices available to other customers, such as new customers. This means people can see if they are losing out and should think about switching. Business customers will be provided with best tariff information by their provider in a form suitable for them.

**Customers who remain out-of-contract will be given best tariff information by their provider at least annually.** For residential customers, this will be an annual notification which includes information about their current contract, as well as the best tariffs for the services they buy.

**These requirements will come into effect on 15 February 2020.** This is to allow providers to implement the reforms reliably and effectively, by changing their systems and processes, so they are ready to send millions of customers notifications via text, email or letter.

**Ofcom will monitor the impact of the notifications.** For example, we will collect information from providers and conduct customer research on engagement with, and effectiveness of, provider's notifications. We may also conduct randomised control trials if our monitoring of the notifications show potential for improvements in how providers are implementing the requirements.

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<sup>1</sup> Where we refer to 'end-of-contract' or 'minimum contract period', or being 'in-contract' or 'out-of-contract', this refers to customers' fixed commitment period.

## Background

- 1.1 Ensuring customers are treated fairly is a priority for our work this year. We want customers to shop around with confidence, make informed choices and get a fair deal.
- 1.2 Customers of broadband, mobile, pay TV and home phone services often sign up to contracts which commit them to paying for that service for a minimum length of time, usually 12, 18 or 24 months. This means customers cannot cancel their services or switch to a different provider before the end of this period without paying a cancellation charge.
- 1.3 Once this minimum contract period ends, customers are free to switch to a better deal with their existing provider or change providers without paying any charges. However, many customers do not take advantage of the options available to them at this point and, as a result, may pay more than they need to or experience automatic changes to their services. Our research shows that many customers are confused about the status of their contract and are unaware of the options, savings or benefits available to them when their minimum contract period comes to an end.
- 1.4 To help address this, we believe customers should be informed at an appropriate time about the status of their contract, so that they can consider taking action.

## Our previous proposals

- 1.5 In July 2018, we proposed new rules to require providers to send a notification to their customers when their minimum contract period is coming to an end and a notification for those already out-of-contract. In December 2018, we consulted on revised rules that were based on implementing the new European Electronic Communications Code. Our updated proposals included requirements to tell residential and business customers about their provider's best available tariffs in these notifications.
- 1.6 We received a range of responses to our December consultation from communications providers, consumer bodies, advocacy groups, industry bodies, other organisations and individuals. Respondents were broadly supportive of our proposals. However, a number of concerns were raised by providers, particularly about the requirement to tell customers about their best tariffs and how this would be implemented in practice, and the requirement to send notifications to all business customers.

## Our decision

- 1.7 Having carefully considered comments on our proposals, we have decided to require providers to send end-of-contract notifications with best tariff advice to residential and business customers. We have also decided that all customers who remain out-of-contract should receive annual best tariff information.
- 1.8 We have made some modifications to our December proposals to take account of comments we received. Specifically, we have amended our approach for business customers to allow providers more flexibility in how they meet the requirements to

provide an end-of-contract notification and annual best tariff information to those customers. We have also provided greater clarity in relation to the required content of the notifications.

- 1.9 We are putting in place new rules (known as general conditions) and we are issuing guidance on how we expect providers to comply with the new requirements for residential customers.
- 1.10 We are giving providers nine months to implement these changes to allow time for them to make the necessary modifications to their systems and processes – in particular, the changes needed to tell customers about their best tariffs. Customers will therefore start receiving these notifications from 15 February 2020.

## 2. Introduction and background

- 2.1 Ofcom strongly believes that customers should get a fair deal for their communication services, and ensuring customers are treated fairly is a priority for our work this year. This work includes a number of ongoing projects, including improving pricing for mobile handset and airtime customers, and consideration of differential pricing practices in broadband.<sup>2</sup> A central part of this work is ensuring that customers are given the information they need to make informed choices and to shop around with confidence.
- 2.2 Customers of broadband, mobile, pay TV and home phone services often sign up to contracts which commit them to paying for that service for a minimum length of time, usually 12, 18 or 24 months. This means customers cannot cancel their services or switch to a different provider before the end of this period without paying a cancellation charge.
- 2.3 Once this minimum contract period ends, customers are free to switch to a better deal with their existing provider or change providers without paying any charges. However, many customers do not take advantage of the options available to them at this point and as a result pay more than they need to or experience automatic changes to their services.
- 2.4 For those customers that do think about switching to a new deal, the communications market offers many choices, but these may be complex and difficult to navigate. Customers can choose to have a variety of different services with a single provider or with multiple providers. They can choose to have their services on a standalone basis or in a bundle. Bundled services could be on one contract or multiple contracts. Providers may also add additional benefits to contracts (e.g. cloud storage or call screening services, or free subscriptions to third party services such as Netflix or Spotify), which could influence a customer's choice of service and provider.
- 2.5 We are concerned that the market may not be working well for everyone. While there are good deals available which many customers take advantage of, industry practices of charging significantly different prices when a customer is in contract and when they are out-of-contract mean too many customers are not on a good deal.<sup>3</sup> Customers who shop around generally benefit from competition and the choices available to them while customers who do not shop around typically pay higher prices.
- 2.6 We believe that at the end of their contract all customers should be provided with information that enables them to take advantage of the wide choice of communication services available and shop around with confidence, so that they can get the best deal to

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<sup>2</sup> Our 2019/20 Annual Plan set out our planned timings for these projects. Available at: <https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans>

<sup>3</sup> See for example paragraph 2.10 of the December 2018 consultation: Ofcom, *Helping consumers get better deals - Consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband*. Available at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-get-better-deals>

meet their needs. This could mean taking up a new deal with their current provider, switching to a new provider, or making an informed decision to stay on an existing deal.

## July 2018 consultation

- 2.7 In 2017 we launched a programme of work with the aim of ensuring that markets work effectively for consumers.<sup>4</sup> As part of this work we gathered views from interested parties and carried out consumer research. In April 2018, we published an update that highlighted some of the results of this research. We found that some consumers lack confidence, knowledge and understanding of the communications services they buy.<sup>5</sup>
- 2.8 In July 2018 we proposed to set new general conditions to require providers to send end-of-contract notifications and one-off out-of-contract notifications to their residential and small business customers (the July 2018 consultation).<sup>6,7</sup> We made detailed proposals in relation to the scope, content and structure of these notifications, as well as the method and timing of delivery. These proposals were intended to achieve the following regulatory policy objectives:
- a) to ensure consumers are informed at an appropriate time when their fixed commitment period is coming to an end, and of any changes to price or services that will occur as a result; and
  - b) to ensure consumers are informed that their fixed commitment period has already ended if they were not previously informed of this.
- 2.9 We sought to ensure that consumers are able to make informed decisions and to protect them against unwelcome changes to services and prices.
- 2.10 That consultation closed in October 2018 and we received a wide range of responses from interested parties.<sup>8</sup> At a similar time, the details of the new European Electronic Communications Code were confirmed and included certain provisions which are relevant to our work in this area, as explained further below.

## European Electronic Communications Code

- 2.11 The European Electronic Communications Code (EECC) is a new EU Directive which updates and replaces the four Directives that make up the EU regulatory framework for electronic

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<sup>4</sup> Ofcom, 14 July 2017, *Helping consumers to engage in communications markets: Call for Inputs*. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0014/104441/call-inputs-consumer-engagement-communications.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0014/104441/call-inputs-consumer-engagement-communications.pdf)

<sup>5</sup> Ofcom, 27 April 2018, *Helping consumers to engage in communications markets – Update on next steps*. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/113451/Engagement-project-update\\_April-2018.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/113451/Engagement-project-update_April-2018.pdf)

<sup>6</sup> Ofcom, 31 July 2018, *Helping consumers to engage in communications markets: Consultation on end-of-contract and out-of-contract notifications*. Available at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/end-of-contract-notifications>.

<sup>7</sup> In our July 2018 consultation we defined a small business as a business for which no more than 10 individuals work

<sup>8</sup> All non-confidential responses are available on our website at the link above.

communications.<sup>9,10</sup> It entered into force on 20 December 2018 and Member States have until 21 December 2020 to transpose it into national law. We understand DCMS intends to consult this year on transposing the parts of the EECC that require changes to primary legislation.<sup>11</sup>

- 2.12 Title III of Part III of the EECC<sup>12</sup> contains rights for end-users, building on those currently contained in the Universal Service Directive. It specifies a range of protections for end-users, which are subject to full harmonisation. This means that, in the areas those protections cover, Member States may not maintain or introduce end-user protections in national law that diverge from those provisions of the EECC, including more or less stringent provisions which would provide a different level of protection for end-users.<sup>13</sup>
- 2.13 Article 105(3) of the EECC contains provisions that overlap with the proposals we set out in our July 2018 Consultation. Specifically, it includes:
- a) a requirement to inform end-users, before the end of a fixed commitment period, of the following:
    - i) that their contractual commitment is coming to an end;
    - ii) the means by which they can terminate the contract;
    - iii) best tariff advice relating to their services; and
  - b) a requirement to provide best tariff information to end-users at least annually.<sup>14</sup>
- 2.14 The purpose, intended scope and objectives of Article 105 can be identified in the recitals that accompany the EECC. The aims of the EECC include ensuring effective protection of

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<sup>9</sup> Framework Directive (2002/21/EC), Authorisation Directive (2002/20/EC), Access Directive (2002/19/EC) and Universal Service Directive (2002/22/EC), all as amended.

<sup>10</sup> Directive establishing the EECC (2018/1972/EU) is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2018:321:FULL&from=EN>

<sup>11</sup> We (and the UK Government) are likely to continue to have an obligation to implement the EECC post-Brexit if the UK leaves under the terms of a withdrawal agreement. The Government has stated that, in the event of a “no-deal” Brexit, it would be minded to implement, where appropriate, the substantive provisions of the EECC into domestic law, on the basis that it would support the UK’s domestic policy objectives. See: <https://www.gov.uk/government/publications/what-telecoms-businesses-should-do-if-theres-no-brexite-deal/what-telecoms-businesses-should-do-if-theres-no-brexite-deal>.

<sup>12</sup> Articles 98 – 116, EECC.

<sup>13</sup> Article 101, EECC. Recital 257 elaborates on the requirement for full harmonisation. It notes that divergent implementation of the rules on end-user protection has created significant internal market barriers affecting both providers and end-users. Those barriers should be reduced by the applicability of the same rules ensuring a high common level of protection across the EU. A calibrated full harmonisation of the end-user rights covered by the EECC should considerably increase legal certainty for both end-users and providers, and should significantly lower entry barriers and unnecessary compliance burden stemming from the fragmentation of the rules.

<sup>14</sup> Article 105(3) provides as follows (emphasis added): ***“Where a contract or national law provides for automatic prolongation of a fixed duration contract for electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine to machine services, Member States shall ensure that, after such prolongation, end-users are entitled to terminate the contract at any time with a maximum one-month notice period, as determined by Member States, and without incurring any costs except the charges for receiving the service during the notice period. Before the contract is automatically prolonged, providers shall inform end-users, in a prominent and timely manner and on a durable medium, of the end of the contractual commitment and of the means by which to terminate the contract. In addition, and at the same time, providers shall give end-users best tariff advice relating to their services. Providers shall provide end-users with best tariff information at least annually.”***

consumers and the applicability of fully harmonised end-user provisions to ensure a high common level of protection across the EU.<sup>15</sup>

- 2.15 This high-level of protection includes the availability of transparent, up-to-date and comparable information on offers and services, which are a key element for consumers in competitive markets where several providers offer services. To take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their best interest to do so. The possibility of switching between providers is considered to be key for effective competition. The availability of transparent, accurate and timely information on switching should increase end-user confidence in switching and make them more willing to engage actively in the competitive process.<sup>16</sup>

## December 2018 consultation

- 2.16 In December 2018, we issued a further consultation as we recognised that the purpose, intended scope and objectives of the EECC tied in with those we set out in our July 2018 Consultation and confirmed the case for intervention (the December 2018 consultation).<sup>17</sup> We also noted our duty to secure those objectives by December 2020 (and, until then, not to do anything that would undermine their achievement). We therefore proposed to align our proposals from the July 2018 Consultation with the requirements of the EECC.
- 2.17 In line with the general principles of EU law, the requirements of Article 105(3) should be interpreted purposively. In developing our proposals for the December 2018 consultation, we therefore sought to give effect to the EECC's objective of ensuring a fully harmonised, high-level of protection for end-users. In particular, by ensuring that they are given useful and effective information in order to make informed choices about the services they buy (and which should, in turn, lead providers to compete keenly).
- 2.18 Given our earlier work on the above issues, we stated that we saw no reason to deprive UK consumers of the benefits and protections of Article 105(3) until the end of 2020, but instead intended (subject to consultation) to introduce this high-level of protection for consumers as soon as possible. We therefore consulted on amended proposals that would implement the relevant parts of Article 105(3) of the EECC ahead of the transposition deadline. We also considered that an earlier transposition would avoid providers potentially incurring wasted costs as a result of implementing our original July 2018 proposals, and then implementing a revised approach shortly thereafter when the EECC is transposed into national law.

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<sup>15</sup> EECC, Recitals 3 and 257.

<sup>16</sup> EECC, Recitals 265, 273 and 277.

<sup>17</sup> Ofcom, 14 December 2018, *Helping consumers get better deals - Consultation on end-of-contract and annual best tariff notifications, and proposed scope for a review of pricing practices in fixed broadband*. Available at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-get-better-deals>

- 2.19 Specifically, we proposed to require providers to send their residential and business customers:
- a) an end-of-contract notification before the end of their fixed commitment period; and
  - b) an annual best tariff notification if the customer is outside of a fixed commitment period.
- 2.20 Both of these notifications would include information about the customer's current contract and about their provider's best tariffs.
- 2.21 We made further detailed proposals about the content, form and timing of both types of notifications and proposed to require providers to retain records of notifications for at least 12 months, to enable us to monitor implementation.
- 2.22 We proposed to implement these requirements by modifying the General Conditions of Entitlement (General Conditions) and setting new general conditions using our existing powers under section 45 of the Communications Act 2003 (the Act).<sup>18</sup> We also proposed to issue guidance on how providers should comply with the draft general conditions in a number of areas, including in relation to the provider's best tariffs. We proposed that these requirements would take effect six months after the date of our final statement.
- 2.23 We received 28 responses to the December 2018 consultation, including from providers, consumer bodies and advocacy groups, industry bodies, other organisations and individual consumers. The non-confidential responses are published on our website.<sup>19</sup> The relevant responses are discussed in Sections 3 – 11 of this document.

## Legal framework

- 2.24 In this section, we outline the powers and duties that are relevant to the decisions set out in the remainder of this Statement. We consider in Section 11 how the decisions we have taken accord with those powers and duties.

## Our general duties

- 2.25 Section 3(1) of the Act states that it shall be our principal duty, in carrying out our functions:
- a) to further the interests of citizens in relation to communication matters; and
  - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.<sup>20</sup>

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<sup>18</sup> No amendment to our section 45 powers is required to enable us to implement the relevant parts of Article 105(3) EECC.

<sup>19</sup> Responses to the December 2018 consultation can be found at: <https://www.ofcom.org.uk/consultations-and-statements/category-2/helping-consumers-get-better-deals?showall=1>

<sup>20</sup> Consumer is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

- 2.26 In performing our duties under section 3(1) of the Act, we are required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as well as any other principles appearing to us to represent best regulatory practice (section 3(3) of the Act).<sup>21</sup>
- 2.27 Section 3(4), provides that we must have regard, in performing our duties, to a number of matters (as they appear to us to be relevant), including the desirability of promoting competition in relevant markets; the desirability of encouraging investment and innovation in relevant markets; the needs of persons with disabilities, of the elderly and of those on low incomes; the opinions of consumers in relevant markets and of members of the public generally; and the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in section 3(1) is reasonably practicable.
- 2.28 In addition, section 3(5) of the Act requires that, when performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

## Duties for the purpose of fulfilling EU obligations

- 2.29 As set out in section 4 of the Act, when exercising certain functions,<sup>22</sup> we must act in accordance with the six European Community requirements described there. These include requirements:
- a) to promote competition in the provision of electronic communications services;
  - b) to secure that our activities contribute to the development of the European internal market; and
  - c) to promote the interests of all persons who are citizens of the European Union.<sup>23</sup>

## Powers and duties in relation to general conditions

- 2.30 Section 45 of the Act says that we may set general conditions which contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64. Under section 51(1)(a), we may set general conditions making such provisions as we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services. Section 51(2) sets out a non-exhaustive list of the specific types of general conditions that we may set in pursuance of this purpose. Section 51(2)(d) provides that we can, by general condition, *“require the provision, free of charge, of specified information, or information of a specified kind, to end-users”*.
- 2.31 Section 47(2) governs the circumstances in which we can set or modify a general condition. It states that a condition can be set or modified where it is objectively justifiable in relation

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<sup>21</sup> Our regulatory principles can be found at: [www.ofcom.org.uk/about-ofcom/what-is-ofcom](http://www.ofcom.org.uk/about-ofcom/what-is-ofcom).

<sup>22</sup> Including those we propose to exercise in this document.

<sup>23</sup> We have also had regard to the objectives in Article 3(2) of the EECC.

to the networks, services, facilities, apparatus or directories to which it relates,<sup>24</sup> not such as to discriminate unduly against particular persons or against a particular description of persons, proportionate to what the condition or modification is intended to achieve, and transparent in relation to what it is intended to achieve.

## Impact assessments

- 2.32 Our December 2018 consultation, and in particular Sections 10 and 11, set out our assessment of the impact of our proposals and constituted an impact assessment as defined in section 7 of the Act. In this statement, in particular in Section 10, we have updated our assessment of the effects of our action following consideration of respondents' comments.<sup>25</sup>
- 2.33 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom these policies will apply. Equality impact assessments ('EIAs') assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity. We have given careful consideration to whether or not the decisions contained in this document will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. We do not envisage however, that our decision would have a detrimental impact on any particular group of people.

## This document

- 2.34 The rest of this document is set out as follows:
- Section 3 sets out the scope of the end-of-contract notifications and annual best tariff information;
  - Section 4 sets out the required content of the end-of-contract notifications for residential customers;
  - Section 5 covers the provider's best tariff as part of the best tariff advice;
  - Section 6 sets out how the end-of-contract notification for residential customers should be sent;
  - Section 7 sets out requirements for annual best tariff information;
  - Section 8 covers the requirements for end-of-contract notifications and annual best tariff information for business customers;
  - Section 9 covers implementation and monitoring;
  - Section 10 contains our regulatory impact assessment for end-of-contract notifications and annual best tariff information; and

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<sup>24</sup> Section 47(3) states that the setting of a general condition is not subject to the test of being objectively justifiable, although we are likely to consider this in any event when assessing whether the condition is proportionate.

<sup>25</sup> For further information about our approach to impact assessments, see the guidelines, "*Better policy-making: Ofcom's approach to impact assessment*" -

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/57194/better\\_policy\\_making.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/57194/better_policy_making.pdf)

- Section 11 sets out our conclusions and how we consider the requirements meet the necessary legal tests.

2.35 The Annexes are set out as follows:

- Annex A1: Notification of modifications to the General Conditions;
- Annex A2: Guidance for Condition C1;
- Annex A3: End-of-contract notification examples; and
- Annex A4: Glossary and Abbreviations.

## 3. Scope of end-of-contract notifications and annual best tariff information

- 3.1 Article 105(3) of the EECC applies in relation to contracts for electronic communications services,<sup>26</sup> other than number-independent interpersonal communications services and machine-to-machine transmission services. It requires certain information to be sent to end-users.
- 3.2 In this section we consider responses to our December 2018 consultation on the scope of our proposals and set out our decisions on the providers, customers and contracts to which our requirements apply in order to implement Article 105(3) of the EECC.
- 3.3 In summary we have decided that the requirement to send end-of-contract notifications and to provide annual best tariff information applies to:
- a) all providers of public electronic communications services as currently defined in the General Conditions;
  - b) all business and residential customers;<sup>27</sup>
  - c) for end-of-contract notifications, contracts which will be automatically prolonged after the end of the fixed commitment period; and
  - d) for annual best tariff information, contracts that are not subject to any fixed commitment period.

### Services in scope

#### Our December proposals

- 3.4 In December we proposed that the requirement to send end-of-contract and annual best tariff notifications would apply to providers of public electronic communications services, as currently defined in the General Conditions. We said the current definition would not extend to number-independent interpersonal communications services, and so no express exclusion was required for those services. However, we did propose to expressly exclude machine-to-machine transmission services, in line with Article 105(3).
- 3.5 We also set out our view on pay TV services. We said that we had the power to regulate a pay TV service provided to an end-user as an electronic communications service insofar as it includes the conveyance of signals on an electronic communications network.<sup>28</sup>

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<sup>26</sup> The EECC contains a revised definition of an electronic communications service at Article 2(4).

<sup>27</sup> However, we now only specify at a high level the requirements for business customers. Providers will have greater flexibility to decide how to deliver the required information to their business customers, taking account of the specific needs of those customers (see Section 8 for further details).

<sup>28</sup> See paragraphs 4.6 – 4.7 of the December 2018 consultation.

## Consultation responses

3.6 Most respondents agreed with our proposals. One provider, Dixons Carphone, stated there is a “*strong case*” for including standalone over-the-top content services in the scope of this regulation. Sky reiterated its position that pay TV services provided as a standalone service fall outside Ofcom’s legal authority, but others (TalkTalk and BT) welcomed Ofcom’s clarification that the requirements would apply to pay TV services.

## Our decision

3.7 We are maintaining the scope of relevant services proposed in our December 2018 consultation, in order to implement Article 105(3). Providers are required to send end-of-contract notifications and provide annual best tariff information for contracts for public electronic communications services as currently defined in the General Conditions.<sup>29</sup> We have excluded machine-to-machine transmission services.<sup>30</sup> We remain of the view, set out above, about when we can regulate a pay TV service as an electronic communications service. Whether a particular pay TV service falls within that scope will depend on the specific nature of the service in question, and the specific circumstances under which it is provided, which should be assessed on a case-by-case basis.

3.8 In response to Dixons Carphone (and notwithstanding our view about a case-by-case assessment), it is unlikely a (genuine) standalone over-the-top content service would fall within the scope of our requirements, because it is unlikely to include the necessary conveyance of signals.

## Customers in scope

### Our December proposals

3.9 Article 105(3) requires notifications to be sent to an end-user, which is defined to encompass both residential and business customers (except for a business which is itself a communications provider).<sup>31</sup>

3.10 In line with this requirement, we proposed that end-of-contract and annual best tariff notifications should be sent to all subscribers,<sup>32</sup> which would include both residential and business customers. Our draft general condition contained detailed requirements on the content of end-of-contract and annual best tariff notifications for both types of customers.

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<sup>29</sup> As noted in the December 2018 consultation, ‘electronic communications services’ are defined in the EECC in a more expansive manner than in the current General Conditions. We are not transposing that new definition of electronic communications services from the EECC into the General Conditions as part of this statement. However, the remaining provisions of the EECC (including that new definition) will be transposed in due course.

<sup>30</sup> We remain of the view that no express exclusion is required for number-independent interpersonal communications services.

<sup>31</sup> See paragraphs 4.10 – 4.12 of the December 2018 consultation.

<sup>32</sup> We proposed to use the term “subscriber” instead of “end-user” in the General Conditions, as we considered it only made sense for the notifications to be sent to the end-user that is a party to the contract for the services in question. See footnote 41 of the December 2018 consultation.

- 3.11 We set out our view that some businesses may be better equipped with the skills and resources to manage their contractual arrangements than residential customers. They are therefore more likely to have a better knowledge of services provided under their contract or are more readily able to find out this information.
- 3.12 This informed our proposal that, in relation to some of our requirements, the objectives of Article 105(3) could be achieved by a different approach for businesses compared to what we considered necessary for residential customers. We therefore set out different sets of guidance on how providers should comply with the draft general conditions in relation to businesses and for residential customers.

## Consultation responses

- 3.13 Many respondents commented on the inclusion of business customers in the scope of our requirements.
- 3.14 Some respondents agreed with our proposals. One respondent, [X], said many businesses face the same challenges as other consumers. The Advisory Committee for Scotland (ACS) noted that the lack of information for businesses at the end of a fixed commitment period could become prohibitive for businesses to manage a contract or make an informed decision about switching provider. Dixons Carphone highlighted that small businesses would benefit from inclusion, as unlike larger businesses, they may not have the resources or dedicated managers to monitor business connectivity needs.
- 3.15 The Federation of Communication Services (FCS) welcomed the lighter proposals for business customers noting that they were competent enough to understand their contracts.
- 3.16 Many respondents highlighted how businesses differ from residential customers, noting in particular that they often have greater resources; are more likely to purchase complex products; more actively engage with providers, often via a dedicated procurement team; and, have greater bargaining power in relation to providers. Some respondents said this meant businesses had a variety of needs different to those of residential customers and that these needs may not be well served by the information sent via notifications.
- 3.17 Many respondents highlighted that the diversity of businesses and the complexity of their arrangements would also make implementing our proposals for businesses particularly costly. Evolving Networks thought that the requirements will be especially harder for smaller providers to implement and it may lead to them being priced out of the market.
- 3.18 Some respondents said that businesses should not fall within the scope of our proposals. Some suggested businesses should be excluded from the requirements based on certain characteristics, such as whether they employed an account manager to handle their communications services. Others called for us to implement more flexible or principle-based requirements in relation to business customers which would allow providers to have greater discretion to decide how and when to contact businesses. Some suggested that it would be sufficient to meet the needs of most businesses if they received a notification

simply highlighting possible changes to their contracts instead of the more detailed notifications we had proposed.

- 3.19 A number of respondents challenged the legal basis of our proposals, in particular our interpretation of the EECC, and its applicability after the UK leaves the European Union. A response from Verizon, AT&T, Gamma, Colt and CenturyLink (Collective business response), as well as the UK Competitive Telecommunications Association (UKCTA) suggested that the European Commission intended for different requirements to be applied to varying sizes of business and that our requirements rested on a drafting error made by the Commission.

## Our decision

- 3.20 The scope of Article 105(3) is clear in seeking to protect both residential and business customers. The reference to “end-users” is not a drafting error, as suggested by some respondents.<sup>33</sup> As Article 105(3) is a full harmonisation provision, it is not possible for us to exclude business customers from our requirements entirely.
- 3.21 We recognise the uncertainty created by the Brexit process, and the potential implications of a “no deal” scenario on our obligation to implement EU legislation. However, we are proceeding on the basis that the UK is currently a Member State and that our obligation to implement the EECC is likely to remain if a Withdrawal Agreement is concluded with the EU.<sup>34</sup>
- 3.22 We included small businesses within the scope of the proposals in our July 2018 consultation because we had identified harm to this group.<sup>35</sup> In addition, we note that some respondents welcomed the extension of scope to all businesses.
- 3.23 However, having considered respondents comments, we now consider that the objectives of the EECC and the outcomes it seeks to achieve can be more effectively and usefully implemented for business customers by giving more flexibility to providers in how to communicate with these customers.
- 3.24 We agree with respondents that the business landscape is large and varied and that different types of businesses have different needs. In our December 2018 consultation we highlighted evidence from our research that companies with more than 10 employees

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<sup>33</sup> The European Commission’s original legislative proposal did not include a requirement in relation to end-of-contract notifications or annual best tariff information. An amendment to the legislative proposal to require providers to notify consumers of the end of their initial contract period and how to terminate the contract was proposed by the European Parliament in October 2017 (amendments 195 and 196 proposed by the Committee on Internal Market and Consumer Protection). The proposed provision was modified, in particular to apply for the benefit of all end-users and extended to include best tariff information, during trilogue negotiations between the Commission, Parliament and the EU Council. The amendment from “consumer” to “end-user” can be seen in track changes in the compromise text agreed by the Committee of Permanent Representatives on 29 June 2018, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=consil:ST\\_10692\\_2018\\_INIT](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=consil:ST_10692_2018_INIT) (the provision was then numbered Article 98(2)). This indicates that the change from “consumer” to “end-user” was agreed by the three EU institutions and was not a drafting error.

<sup>34</sup> On the assumption that a post-exit implementation period would last until at least the end of 2020. See paragraph 2.11.

<sup>35</sup> See paras 3.55 - 3.62 of the July 2018 consultation.

were more likely to have a specialist in telecoms or IT who was responsible for their telecoms services, and that there was higher awareness of the details of their terms and conditions for business contracts. It is reasonable to expect that business customers are generally better equipped with the skills and resources to manage their telecoms contracts than residential customers, as well as more likely to have knowledge about the information provided under their contracts.<sup>36</sup>

- 3.25 Taking account of this, and respondents' comments about the complexity of implementing the detailed requirements we proposed for business customers, we now consider it appropriate to be less prescriptive in relation to the requirements for businesses. We have therefore decided to take a 'copy out' approach to implementing the requirements of Article 105(3) for business customers (i.e. we have, as far as possible, replicated the wording of the EECC obligation for these customers). We have not specified what is required beyond this and therefore providers will have flexibility to judge what is appropriate for business customers on a case-by-case basis depending on the nature of the relevant business customer.
- 3.26 We consider that our revised approach addresses in large part the concerns that providers raised about the detailed proposals in our December 2018 consultation. Our revised approach should significantly reduce the complexity of any system developments required to implement our decisions and such changes will be unnecessary where providers already communicate with their business customers in a way which achieves the objectives of the EECC. Moreover, providers will no longer be required to incur the costs of sending standalone end-of-contract notifications and annual best tariff information where they can incorporate these requirement alongside existing communication. This should in turn lower the implementation and ongoing costs relative to our proposals in the December 2018 consultation. We set out the details of our decision on the requirements for business customers in Section 8.
- 3.27 Sections 4 – 7 set out our decisions in relation to residential customers only and our guidance (see Annex A2) only applies to residential customers.

## Contracts in scope

### Our December proposals

- 3.28 Article 105(3) primarily applies where a contract or national law provides for the "*automatic prolongation*" of a fixed duration contract. It also requires providers to provide end-users with best tariff advice at least annually.
- 3.29 In the December 2018 consultation we proposed that end-of-contract notifications should be sent to customers before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point in accordance with the terms of that contract or governing law. We said that we expected that most contracts with a fixed commitment

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<sup>36</sup> See paragraph 4.22-4.25 of the December 2018 consultation.

period would automatically roll-over, with the service continuing to be provided after the expiry of the fixed commitment period.

- 3.30 We also proposed that annual best tariff notifications should be sent to customers who are beyond their fixed commitment period and that they should receive one for each year they are 'out-of-contract'. This would mean customers have best tariff information when they are no longer bound by fixed commitment periods and are in a position to take advantage of the best deals available.

## Consultation responses

- 3.31 Most respondents agreed with our proposals.
- 3.32 One respondent, [X], said the terminology used needed to be clarified, because it did not consider the contract as being prolonged beyond the fixed term because at that point no fixed term would be applicable but it would continue to provide the service.
- 3.33 One respondent, Gamma, argued our proposals could incentivise providers to issue contracts without automatic prolongation [X]. First Utility suggested that end-of-contract notifications should be sent to customers regardless of whether their contract would be automatically prolonged after the expiry of a fixed commitment period.
- 3.34 uSwitch said providers should send annual notifications to customers who are in-contract. Another respondent, [X], queried whether annual best tariff notifications should be sent only to customers who have previously been subject to a fixed commitment period or to those who have never entered a fixed term period contract.

## Our decision

- 3.35 We have decided to maintain our proposals in relation to the circumstances in which end-of-contract notifications should be sent and annual best tariff information provided.
- 3.36 Our modifications to Condition C1 therefore require end-of-contract notifications to be sent to subscribers before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point in accordance with the terms of that contract or governing law. These conditions are required to implement Article 105(3) of the EECC and we consider they are sufficiently clear. A contract is prolonged where, at the end of any fixed commitment period, the contractual relationship between the provider and subscriber carries on and the services continue to be provided (usually on a rolling monthly basis – i.e. without being subject to a fixed commitment period).
- 3.37 In response to the confidential respondent's comment, a fixed commitment period is defined in the current General Conditions and is not the same as a 'fixed term'.
- 3.38 We note Gamma's concern that the requirements might lead providers to issue contracts where the service would cease at the end of the fixed commitment period (i.e. a genuine fixed term contract). However, we think it unlikely that providers would move to offering these contracts. It would not be in the provider's interest to arrange their contracts such that customers' services automatically end at the end of a fixed term as that would make

the customer more likely to stop using that provider's services altogether. Therefore, we consider the risk of consumer harm in this regard to be low.

- 3.39 Similarly, we do not consider First Utility's suggestion to be appropriate. Given that currently providers mainly offer contracts on a roll-over basis and we do not consider they would move to offering more genuine fixed term contracts, we do not consider it necessary to require end-of-contract notifications in these circumstances. In addition, Article 105(3) is a full harmonisation provision which prevents us from requiring end-of-contract notifications for contracts that do not roll over.
- 3.40 However, we will consider further the impact our requirements have on market practices as part of our plans to monitor their implementation (see Section 10). Our modifications to Condition C1 also require best tariff information to be sent to subscribers if their contract is not subject to a fixed commitment period. This would include contracts that had never been subject to a fixed commitment period.
- 3.41 In response to uSwitch's comment, we do not think it would be helpful to send annual best tariff information to in-contract customers. Those customers are unlikely to be in a position to switch without incurring early termination charges and the end-of-contract notification fulfils the information needs of in-contract customers.

## 4. Content of end-of-contract notifications for residential customers

- 4.1 Article 105(3) requires end-users to be informed prior to the expiry of a fixed commitment period of:
- a) the end of the contractual commitment period;
  - b) the means by which to terminate the contract; and
  - c) best tariff advice relating to their services.
- 4.2 As noted in Section 2 these requirements are intended to ensure consumers have transparent, up-to-date and comparable information on offers and services, which is key to their participation in competitive markets. They pursue a number of related objectives. They seek to ensure consumers are able to make informed choices and to change providers when it is in their best interest to do so. They reflect that providing consumers with transparent, accurate and timely information on switching should increase their confidence in switching and make them more willing to engage actively in the competitive process. The way the requirements are implemented should secure these objectives taking account of the complexity of the communications market.
- 4.3 When considering their services, customers can choose to have a variety of different services with a single provider or with multiple providers. They can choose to have their services on a standalone basis or on a bundled basis, and bundled services could be on one contract or multiple contracts. Providers may also include additional benefits to contracts (e.g. cloud storage or call screening services, or free subscriptions to third party services such as Netflix or Spotify), which could form part of a customer's choice of service and provider.
- 4.4 Given this complexity, customers may not be aware of the details of their contractual arrangements or understand what happens at the end of the fixed commitment period.<sup>37</sup> We take this into account in implementing the requirements of Article 105(3), so its underlying objectives are achieved in a way that is useful and effective for residential customers. Our requirements also ensure customers are able to assess whether they are on the best tariff and, if not, to consider what the best tariff for them might be. They make clear the possibility of switching and the options available to the customer.
- 4.5 In this section we consider responses to the proposals in our December 2018 consultation regarding the content of the end-of-contract notifications. We then set out our decisions on what the notifications for residential customers should include.
- 4.6 In summary, end-of-contract notifications for residential customers must include the following information:

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<sup>37</sup> For example, see paras 3.11-3.20 of the July 2018 consultation.

- a) the date on which the fixed commitment period for the contract will end;
- b) any applicable notice period, or, for mobile contracts, that a notice period may apply;
- c) that early termination charges relating to that contract no longer apply from the point the fixed commitment period ends;
- d) the monthly subscription price, and any changes to it after the end of the fixed commitment period;
- e) details of the services currently provided under the contract;
- f) changes to the services provided because the fixed commitment period is ending;
- g) details of other contracts taken with the same provider;
- h) the dates on which the fixed commitment period of other contracts taken with the same provider end;
- i) how to terminate the contract;
- j) options available to the customer; and
- k) the provider's best tariffs (discussed in Section 5).<sup>38</sup>

4.7 We set out guidance on how providers should comply these requirements in Annex A2.<sup>39</sup>

4.8 We first address our decision on the particular use of language in notifications, before addressing the requirements above. The requirements on the provider's best tariffs are discussed in Section 5.

## Specifying words or language to be used in the notification

### Our December proposals

4.9 We did not propose to prescribe the actual words or language to be used in the notification.

### Consultation responses

4.10 The majority of providers agreed with our proposal not to be prescriptive with the language required in the notifications. One respondent, uSwitch, noted the importance of

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<sup>38</sup> We explained in the December 2018 consultation that the information in (a) and (e) is required in order to inform end-users of the end of their contractual commitment period, the information in (b), (c), (g) and (i) is required to inform end-users of the means by which to terminate their contracts, and the information in (d), (f), (h), (j) and (k) is required as part of best tariff advice. We organised the discussion of our proposals in the consultation in line with these three underlying requirements of Article 105(3) (see Section 5 and 6 of the December 2018 consultation). For ease of reading, we have departed from that order in this section – e.g. so that we are able to group together discussion of particular proposals which received few comments from respondents. However, we remain of the view set out in the December 2018 consultation about which pieces of specific information to be included within end-of-contract notifications are required by which of the underlying provisions of Article 105(3).

<sup>39</sup> We are issuing guidance on some of our modifications to Condition C1 (guidance referred in this document means this guidance unless otherwise stated). The new guidance is in Annex A2 and we will publish a consolidated version of this guidance with the existing guidance on Condition C1 when Conditions C1.10-C1.21 enter into force on 15 February 2020.

on-going monitoring to ensure that the language used by providers is “within the spirit of the rules”. The Communications Consumer Panel and ACOD (CCP-ACOD) highlighted the importance of clarity in communications, whilst noting that “an overly prescriptive approach may lead to a reliance on technical wording and phraseology that does not help consumers.”

- 4.11 Some respondents argued for a more prescriptive approach and Dixons Carphone thought the EECC allowed this. Others, Vodafone and the CCP-ACOD, thought this might be particularly helpful for vulnerable customers. Decision Tech also said Ofcom should impose a standardised approach to wording.

## Our decision

- 4.12 We remain of the view that we should not be prescriptive in terms of the exact language required in the notification.
- 4.13 We agree that clarity in the language of the notification is important for customer understanding. The EECC does not specify the precise language to be used in notifications but it seeks to ensure a high-level of effective consumer protection, including through the availability of transparent, clear, and understandable information. We consider that allowing providers flexibility to adapt their language to their particular style will ensure they are able to communicate with their customers in the most effective way. However, we will monitor the effectiveness of the approach providers take to implementing the required notifications and we set out our monitoring plans in Section 9.

## End date, notice periods, and early termination charges

### Our December proposals

- 4.14 We proposed that the end-of-contract notification should inform customers of the date on which their fixed commitment period will end and that early termination charges will not apply after that point. We also proposed that the notice period (if any) that applies under the contract should be included. We said that for mobile contracts, providers may instead include a message that a notice period may apply.

### Consultation responses

- 4.15 All respondents agreed that the end date and a message about early termination charges should be included and most respondents agreed with the inclusion of notice periods.
- 4.16 A number of respondents highlighted the lack of understanding among customers about notice periods and therefore the importance of clarity on this point in the notifications. ACS suggested that the notification should also include the earliest date on which a customer could arrange a switch without incurring an early termination charge, i.e. the date from which the customer could give their notice to align with the end of their fixed commitment period.

- 4.17 First Utility said providers should explain the implications of switching too early and incurring early termination charges or switching at a point where the customer's current contract would overlap with their new contract.
- 4.18 Some respondents wanted clarity on how auto switching for mobile phone contracts from July 2019 and the associated ban on charges for notice periods<sup>40</sup> should be addressed in the notification.
- 4.19 Sky also highlighted that notice periods are not standardised across services and that this would add to the complexity of the notification.

## Our decision

- 4.20 Our modifications to Condition C1 require the end-of-contract notification for residential customers to include:
- a) the date on which the fixed commitment period will end;
  - b) any applicable notice period, or, for mobile contracts, a message that a notice period may apply; and
  - c) a message that early termination charges will not apply from the end of the fixed commitment period.
- 4.21 In our judgement, this information is necessary for residential customers to be usefully and effectively informed about the end of the contractual commitment period. As part of being informed of the means by which to terminate their contract, customers need to know the length of their notice period in order to plan appropriately if they decide to change provider. They also need to know that early termination charges will not apply from the end of the fixed commitment period so that they understand when they can terminate their contract without these charges applying.<sup>41</sup>
- 4.22 We note that customers' understanding of notice periods is variable and that the earliest date a customer can switch services without incurring a charge may vary depending on the nature of the service, the applicable notice period and any early termination charges specified in the contract. Providers should make this as clear as possible in the notification. Whilst we do not propose to be prescriptive with regard to the language used in notifications, we do expect providers to communicate in a way that is understandable for their customers.

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<sup>40</sup> For more information, see: Ofcom, 19 December 2017, *Consumer switching - Decision on reforming the switching of mobile communication services*. Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/108941/Consumer-switching-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/108941/Consumer-switching-statement.pdf)

<sup>41</sup> If customers mistakenly believe that these charges will continue to apply after the end of the fixed commitment period, this may prevent them from switching or changing deal. Equally, if they are unsure about whether early termination charges will apply, then it may dissuade them from engaging and considering their options. Inclusion of this information also helps to avoid unintended consequences that may otherwise arise when notifications are sent in advance of the end of the fixed commitment period, by ensuring that customers are aware that early termination charges will be payable up to the date the fixed commitment period ends.

- 4.23 Paragraphs 11-12 of our existing Condition C1 Guidance<sup>42</sup> make clear that providers should allow customers to give more than the minimum period of notice. Customers can therefore *arrange* a switch without incurring charges by giving a longer period of notice ahead of the of the contract end date if they wish, and therefore there is not a specific date which would be meaningful to include in the notification as suggested by the ACS.
- 4.24 Providers should ensure that nothing in the notifications implies customers cannot give more than the minimum notice period or that they cannot contact their provider immediately upon receiving the notification to cancel or change their services with effect from the end of their fixed commitment period.
- 4.25 With regard to auto switching for mobile contracts, our modifications to Condition C1 require the inclusion of a message that a notice period may apply and providers can add additional information if they think this would be helpful to their customers. This could include details of auto switching with an explanation that using this process would mean the customer incurs no notice period charges.

## Current price and any changes after the end of the fixed commitment period

### Our December proposals

- 4.26 In the December 2018 consultation, we proposed to require providers to include in end-of-contract notifications the monthly subscription price currently paid by the customer and the monthly subscription price that will come into effect at the end of the fixed commitment period (if the customer takes no action). We said this information was an essential part of best tariff advice which would help customers compare their tariff against others, to assess which is best for them.

### Consultation responses

- 4.27 Most respondents agreed with our proposals. One provider, Virgin Media, disagreed and expressed concern that information given to a customer about their current and future price may be out of date by the time the notification is sent or may confuse the customer. Instead, it suggested that a generic message should be included informing the customer that their price may rise. First Utility said that it should be sent separately to tariff advice and Three said that customers should be able to follow a link to view this information rather than receive it as part of the notification.
- 4.28 One respondent suggested that price information should be included alongside details of the customer's usage and allowance. Another said the price stated should be an

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<sup>42</sup> *Ofcom's Guidance under General Condition C1 – contract requirements*. Available at : [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf)

aggregated cost message, including a future cost projection. It said this would be more effective in increasing consumer engagement.

## Our decision

- 4.29 Having taken account of the responses, we are of the view that this information is an essential part of customers being informed about the end of their commitment period and best tariff advice. We have decided that the modifications to Condition C1 will require the end-of-contract notification for residential customers to include the current subscription price paid under the contract and the price after the end of the fixed commitment period.
- 4.30 Telling customers the monthly price they currently pay and how this would change (or not) is, in our view, essential for them to assess what they will have to pay if they do not act. It is a key element of their ability to compare their existing price against new tariffs offered to them by their provider (or against another provider's tariffs) and to decide which is best.<sup>43</sup>
- 4.31 We do not consider a generic message informing a customer that the price may change would be sufficient to enable them to assess the specific impact for them of choosing not to act or to enable comparisons with other tariffs. This information would also need to be provided alongside other tariff options to enable comparison, so sending this information separately would also not be sufficient.
- 4.32 The information customers will be given about their current and future price will be part of a set of information which should increase consumer engagement and help them make good decisions. We do not think additional information (e.g. on the customers usage or aggregated costs) would form part of the minimum necessary to achieve that. Even so, nothing in our requirements would prevent a provider from additionally sending details of the customer's usage or aggregated cost information should they consider it helpful for their customers.

## Details of services currently provided and any changes because the fixed commitment period is ending

### Our December proposals

- 4.33 We proposed that end-of-contract notifications should include details of the services which the provider currently provides under the contract. For residential customers our draft guidance set out that this would include a comprehensive list of all services which form

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<sup>43</sup> Participants in our 2018 end-of-contract notifications qualitative research identified monthly price changes at the end of the period as essential information in a notification, which could help them determine whether they wanted or needed to take any action. Most thought that, if the amount they were paying was going to change after the end of the period, it should be incumbent on the provider to let the customer know this. Jigsaw, July 2018: *End-of-contract notifications: Attitudes to and understanding of alternative content options*. Slides 15, 26, 46, 52. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/117074/Qualitative-end-of-contract-notification-research-July-2018.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/117074/Qualitative-end-of-contract-notification-research-July-2018.pdf)

part of that contract, including all ancillary services. Our draft guidance noted that we did not expect the provider to include information on services provided by third parties if the provider is not charging for them.

- 4.34 We also proposed that, for residential customers, the details of any changes to services, including if they were coming to an end, should be provided as part of the notification. This would enable an assessment of whether, if their contract rolls-over, any tariff on offer is the best one for them.

## Consultation responses

- 4.35 Most respondents agreed with the proposal to list all services.
- 4.36 BT opposed the inclusion of ancillary services because it said it would:
- a) result in “cluttering up the notification with a potentially long list” of services that may “confuse” and “disengage” customers; and
  - b) add to the complexity of implementation and the cost of building required systems. It considered these costs were disproportionate because including this list of services risks ‘diluting’ the key message for customers.
- 4.37 BT also highlighted an inconsistency between the services providers are expected to list as part of the contract and those it should consider when determining the provider’s best tariffs. In the former the guidance specifies all services, including ancillary services, are to be listed, whereas in the latter these services do not need to be considered when determining the provider’s best tariffs.
- 4.38 BT queried whether our definition of ‘ancillary services’ would include third party services that a customer pays for via their bill, such as games or ringtones, and suggested that these should not be included.
- 4.39 Most respondents agreed with our proposal that, for residential customers, the details of any changes to services should also be included. One provider, Virgin Media, suggested that the inclusion of this information could confuse customers and suggested instead that a generic message should be added, encouraging them to contact their provider to discuss any changes. O2 asked what should be the base tariff from which it calculated the changes to the service that needed to be included in the notification. [3<].

## Our decision

- 4.40 We have decided that details of the services provided under the contract should be included in the notification. However, we have amended our guidance to provide more flexibility for providers on how this information should be presented, and to provide more clarity about what is meant by “third party services”.
- 4.41 Our modifications to Condition C1 will require the end-of-contract notification for residential customers to include:
- a) details of the services provided under that contract; and

- b) any changes to the services provided under the contract because the fixed commitment period is ending.
- 4.42 Our guidance specifies that this should be in the form of a comprehensive list of all services which form part of the contract, including ancillary services, and any changes to those services.
- 4.43 Article 105(3) requires end-users to be informed about the end of their contractual commitment and to be provided with best tariff advice. One of the objectives of this information is to enable them to make informed choices and sign up to a new deal (with their existing or a new provider) when it is in their best interest to do so. We consider it essential, therefore, that customers are reminded of all the services they take under the contract coming to an end, including any ancillary services, so that they understand which services are reaching the end of the fixed commitment period and what to take into account when shopping around.
- 4.44 In addition, the objective of best tariff advice is to enable customers to assess whether they are on the best tariff for them and, if not, to consider what that tariff might be by engaging with the offers in the market that are available to them. Informing customers of any changes to their existing services is an important part of enabling customers to weigh up what is on offer, including the impact of taking no action. We see no reason to believe that being told about services they currently receive under the contract, and changes to the services they receive in future, is likely to confuse customers.<sup>44</sup>
- 4.45 However, having considered respondents' comments concerning the amount of information in the notification and the potential for information overload, we think these objectives can still be achieved as long as all of this information is readily available although not necessarily in the notification itself.
- 4.46 For this information to be useful for customers as a reminder of their services, the full list of services would need to be easily and quickly accessible. We consider that providing this in an annex to the main notification or online with a link in the notification would achieve this. We have therefore amended the guidance to specify that only the main services provided under the contract and the associated aspects of those services (and any changes to them) must be listed in the notification.
- 4.47 For example, mobile and broadband providers provide call, SMS and data services, with associated connection speeds and allowances. We consider these to be the main services which, combined with the associated aspects of those services, form the service package

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<sup>44</sup> Our 2018 end-of-contract notifications qualitative research tested consumer comprehension of potential notification messages and to identify any issues with the volume of information, any misleading or worrying information, and messaging that may have a negative impact on consumers' behaviour. Participants saw certain information as essential for inclusion in the end-of-contract notification which could help them determine whether they wanted or needed to take any action. Participants thought that including a breakdown of the current service/contract was essential to the end-of-contract notification. In particular, it would act as a reminder of the services they currently take and would allow them to review what they are paying for and to consider whether they still require those services. Jigsaw, July 2018: *End-of-contract notifications: Attitudes to and understanding of alternative content options*. Slides 15, 26, 46, 52. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/117074/Qualitative-end-of-contract-notification-research-July-2018.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/117074/Qualitative-end-of-contract-notification-research-July-2018.pdf).

the customer receives from their provider. . They must be listed in the notification itself. The provider may also provide other services to the customer as part of the contract, like over-the-top content services for music and video streaming or cloud storage, but we would not consider these to be the customer's main services. These services can be listed in another location as long as they are provided in a single easily accessible location and that location is referenced in the notification.

- 4.48 This approach will ensure customers are clearly told in the notification, and can easily understand, how the end of their contract will impact their main services and associated aspects of those services. Having an additional reference to an easily accessible full list of services relevant to their contract and any changes to them will help ensure customers are made aware of, and understand, the impact on all aspects of their contract and can additionally use this information make comparisons with other offers if they consider it relevant. This approach will avoid the risk of customers being overloaded with what could potentially be a long list of their existing services and changes to those, but at the same time gives them a single location to easily access that information so that they can make meaningful, and accurate, comparisons with other offers that might be available to them.
- 4.49 In response to BT's comment, we do not consider this approach to be inconsistent with our guidance on the services that should be taken into account by a provider in determining the customer's best tariffs. Any of the services provided under the contract could be considered by a customer to be particularly important to them. Therefore, all of the services could be potentially relevant to a customer in making an informed choice to sign up to a new deal (with their existing or a new provider) and to take into account when shopping around. For these reasons, it is important to have the full list of services easily accessible, so customers can compare offers. The most effective offer a provider could make as part of the tariff options would be ones based on the particular services, and aspects of those services, that a customer values the most. However, we recognise that providers will need to make a judgement about these, so as a minimum the provider's best tariffs should be based on the subscriber's main services and the associated aspects of those services. The notification is intended to act as a prompt for a customer to consider their options more broadly and to engage in the market, and we consider that our decision fulfils this objective. The full list of services will be available to help the customer shop around and to consider the specific services which are important to them.
- 4.50 We discuss the costs of implementing this approach further in Section 10. In view of the importance of this information for fulfilling the above objectives, and the objectives of the EECC, we consider the costs of listing this information are appropriate.
- 4.51 In relation to the O2's query about the 'base tariff' from which changes to the service are calculated, our modifications to Condition C1 and the associated guidance are clear that a change to the main aspect of the service would need to be included in the notification itself. As an example, a change to a customer's data allowance once the contract rolls over would need to be included, because data allowance is an associated aspect of the main service under the contract.

- 4.52 Our draft guidance also referred to “services provided by third parties”. However, only services provided under the contract between the provider and the customer are caught by the general condition (see Condition C1.11(b)). Our reference to third party services in the draft guidance was intended to refer to services falling within that description but which are supplied by a third party.<sup>45</sup> By way of example, if a customer’s contract with a mobile provider entitles the customer to access content delivered by a third party such as Spotify, then this would be caught. However, if the provision of the third-party service does not fall under the contract subject to the notification, then it is not caught by this requirement. We have amended our guidance to clarify this point.
- 4.53 Services charged for on a one-off basis and added to customer bills (such as games or ringtones in BT’s example) would only need to be listed if they are a service provided under the contract to which the notification relates. If these services were provided on a one-off basis under a separate contract they would not need to be included in the notification, even if the customer paid for them via the same bill.<sup>46</sup>

## Details of other contracts taken with the same provider and the date the fixed commitment period ends for those contracts

### Our December proposals

- 4.54 We proposed that providers must give customers details of other contracts for communication services they take with the same provider. In our draft guidance for residential customers we said the details should comprise a list of other contracts where there is a financial link to the core contract (i.e. the contract for which the end-of-contract notification is given), or where there is an interdependency between the core contract and the other contract.
- 4.55 We also proposed that, in addition to the requirement to give customers details of other contracts they take with the same provider, for residential customers only, providers must also give the date on which the fixed commitment period ends for those contracts. We said that this is important as part of best tariff advice, because customers may consider bundling their services and to help make that choice they need to know when the other contracts come to an end.

### Consultation responses

- 4.56 Many respondents agreed with these proposals and thought this information was important.
- 4.57 Some respondents were concerned that details of other contracts taken with the same provider could confuse customers or overload them with information, which would

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<sup>45</sup> The same analysis would apply equally to ancillary services.

<sup>46</sup> Unless the separate contract is for a Public Electronic Communications Service and is financially linked or interdependent with the contract subject to the notification, in which case details of that other contract must be included in the notification. See paragraphs 4.67 – 4.72.

undermine the intended purpose of the notification. BT said notifications would be complex because of the detailed interplay between contracts and some respondents suggested the notification should simply prompt the customer to contact their provider rather than list the other contracts.

- 4.58 Some providers raised concerns about the cost and proportionality of our proposed approach and suggested that implementation required expensive and complex system changes. Virgin Media stated that more time was needed for implementation because the complexity of the notification ruled out the introduction of an automated solution.
- 4.59 Three asked for greater clarity on what financially linked or interdependent meant to fully understand the scope of the proposals. One provider, Sky, requested greater clarity on what is required when a linked contract has an early termination charge that would be incurred upon termination of the core contract.
- 4.60 Most respondents agreed with our proposal that, for residential customers, the fixed commitment period end date for other contracts taken with the provider should also be included. However, BT and [S<] said it would be costly and complex to create the system links that would enable the inclusion of this information. BT suggested a message to contact the provider would be simpler.
- 4.61 Another respondent, Tesco Mobile, requested clarification on how notifications should be sent when there are multiple end-users taking contracts that are linked. Similarly, it wanted clarification on whether the end date should be included for contracts including family bundles, where additional contracts for other end-users are purchased at a discount.

## Our decision

- 4.62 After considering the consultation responses carefully we remain of the view that the information proposed in the December 2018 consultation should be included in the notification, but we are amending our guidance to make clearer which contracts should be listed.
- 4.63 Article 105(3) requires end-users to be informed about the means by which to terminate their contract and to be provided with best tariff advice. This is intended to enable them to make informed choices and to switch provider when it is in their interests to do so. However, residential customers may have two or more contracts for communications services with the same provider and be unaware of the details of these contracts and the relationships between them. In order to be able to make an informed choice about whether to terminate a contract and change deals or providers, they need to be given information that helps them understand the consequences of that choice. Therefore, the potentially complex implications for terminating a contract when it is financially linked or interdependent with another contract need to be brought to the customer's attention.

Being informed of the wider consequences of a decision to terminate will increase the customer's confidence in making a decision about whether to sign up to a new deal.<sup>47</sup>

- 4.64 If the price or deal that a customer has been receiving on their contract is based on them continuing to receive communications services under other contracts with the same provider, then we consider that this information is also relevant to their decision to switch or to remain with the same provider.
- 4.65 In addition, making an informed choice about whether they are on the best tariff often involves customers deciding whether to buy separate or bundled services. Bundling services may offer them significant savings but may also involve paying charges to terminate other contracts early. To help them make their choice, customers need to know when the fixed commitment period for any other contracts they have with the same provider will end. With this information, customers are better placed to assess whether they should sign up to a new deal for the service to which the end-of-contract notification relates or wait and bundle services when the fixed commitment periods for their other contracts end.
- 4.66 Our modifications to Condition C1 remain unchanged from the December 2018 consultation and will require the end-of-contract notification for residential customers to include details of other contracts for communications services<sup>48</sup> between the subscriber and the provider. The notification will also have to include the dates on which the fixed commitment periods end for those other contracts.
- 4.67 We note, however, respondents' requests for clarity and have amended our guidance in response to this. The amendments make clear that there are only two categories of contracts that need to be listed:
- a) if termination of the contract subject to the notification (the primary contract) triggers an impact on another contract for communications services between the provider and the subscriber (the secondary contract), then the secondary contract must be listed; and
  - b) if termination of a secondary contract triggers an impact on the primary contract, then the secondary contract must be listed.
- 4.68 An impact from primary to secondary contract (or vice versa) could be a financial or another type of impact (e.g. the loss of a discount, automatic termination, changes to terms and conditions, change to services or allowances). We refer to these contracts as "financially linked or interdependent" in this document. These contracts are the most

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<sup>47</sup> Our consumer research shows that participants consider the information about other contracts from the same provider, to be essential to that notification where relevant. Jigsaw, July 2018: *End-of-contract notifications: Attitudes to and understanding of alternative content options*, slide 15.

<sup>48</sup> We note that we will need to consider the implications of the bundling provisions in Article 107(1) of the new EECC on this requirement (and other relevant requirements in the General Conditions) which require that other relevant provisions of the EECC (including Article 105 requiring end of contract notifications and annual best tariff advice) will apply to non-communications services where they are sold as part of a bundle with a communications service. We intend to consult on the proposed modifications needed to the General Conditions to implement these requirements later this year.

relevant to a customer making an informed decision about whether to terminate a contract and change deals or providers.

- 4.69 To address Sky's request for clarification, if cancellation of the primary contract resulted in the payment of an early termination charge under a secondary contract, then the secondary contract would need to be listed in the notification.
- 4.70 Our guidance limits the need for complex systems changes related specifically to this requirement. If the cancellation of one contract will trigger a change in another, then providers should already have systems in place to effect this change (because their systems would need to record any financial linkages to ensure the customer continues to be eligible for the relevant prices/offers of the linked products). The guidance essentially limits the list of contracts to those for which we would expect there would already be linkages in existing systems, which should assist in the identification of the relevant contracts. Accordingly, if any system development costs were to arise, we consider that these would be limited to extracting the name and the end date of the contracts already linked on the system (see Section 10 for further discussion). In the event that more complex systems changes are required, as set out in Section 9, we are extending the implementation period for our requirements to give providers time to make the necessary system changes.
- 4.71 We have considered whether the amount of information this requirement will add to the notifications is proportionate, and whether the inclusion of less detail could achieve the same objective. We do not think a simple message to contact the provider to discuss other implications of termination would be sufficient. The specific information on the customers' other contracts is necessary for customers to consider the potential consequences for them personally of terminating the contract. The inclusion of this information will help give customers the confidence to consider other options in the market by highlighting the related contracts that they need to consider as part of that decision.
- 4.72 We also think requiring information, other than the end date, about linked contracts (e.g. any early termination charges attached to them) is not necessary or proportionate. Listing the specific contracts is sufficient to bring those contracts to the customers attention, so they can be considered as part of any decision to terminate the contract. Listing the end dates of those contracts is sufficient to help the customer consider whether the best tariff for them involves bundling their services and assess whether they should therefore wait for the fixed commitment periods of any of those contracts to end. The required information balances the need for sufficient information with the potential risk of overloading customers with too much detail.
- 4.73 We note Tesco Mobile's question about who should receive a notification for multi-subscription accounts i.e. financially linked or interdependent contracts with different end-users (e.g. family bundles). As discussed in Section 3 our modifications to Condition C1 specify that it is the subscriber who must receive the notification. That is the end-user who is party to the contract which is subject to notification. Therefore, these requirements do not require the end-users of secondary contracts to receive a notification. However, they do require those secondary contracts and their end dates to be listed if a financial discount on them would be removed as a result of terminating the primary contract.

## How to terminate the contract

### Our December proposals

- 4.74 We proposed that providers should inform customers how to terminate their contract and offer a range of contact methods, in line with the existing guidance in relation to Condition C1.3. We said this was required for customers to be able to act on the information provided in the end-of-contract notification.

### Consultation responses

- 4.75 Some respondents raised concerns that customers may be overloaded with information if notifications contained detailed information on cancellation processes, particularly if this was for multiple service types. Others thought this information was essential to an end-of-contract notification. Some suggested highlighting this in the notification and linking to the detail elsewhere. One respondent, [S&], thought it important to highlight the simplicity of switching providers and porting numbers.

### Our decision

- 4.76 We continue to think this information is essential to the notification and our modifications to Condition C1 require the end-of-contract notification for residential customers to include information on how to terminate the contract. The accompanying guidance sets out that providers should also take into account our guidance on cancellation procedures<sup>49</sup> when complying with this requirement.
- 4.77 For customers to be able to act on the information provided in the end-of-contract notification, Article 105(3) requires them to be informed of the means by which they can terminate the contract. Providing information on cancellation procedures is essential to this. As set out in our cancellation guidance, we expect providers to have cancellation procedures which allow customers to cancel easily and quickly, to offer customers a range of communication options for cancelling their contracts, as well as publishing clear and prominent information on their website about the available cancellation routes.
- 4.78 Providers can choose an appropriately simple form of words in the notification to inform customers of their options to terminate the contract and reference fuller guidance if they think this will be helpful to their customers.
- 4.79 We also note that, in addition to information on how to terminate the contract, the notification will also contain a message informing the customer that they can switch to another provider (see below).

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<sup>49</sup> Our guidance on Condition C1.3 (which requires providers to ensure that their conditions and procedures for contract termination do not act as a disincentive to customers against changing providers). The current version of this guidance is available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf)

## Options available to the customer after the fixed commitment period has ended

### Our December proposals

- 4.80 We proposed to require providers to include messages as part of their best tariff advice giving details of the options available to customers at the end of their fixed commitment period. We proposed that “details of the options available” must include advice to residential customers that they can:
- a) stay on their existing contract;
  - b) switch to a new contract with the same provider (including but not limited to those referred to as part of the provider’s best tariffs);
  - c) switch to a new contract with a different provider; and
  - d) for customers on bundled handset and airtime mobile contracts only, switch to a SIM-only deal.
- 4.81 We said the advice should also inform residential customers that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.

### Consultation responses

- 4.82 Most respondents agreed with our proposals to require the inclusion of the options message, with some noting that making customers aware of their choices was central to best tariff advice. Some respondents thought we should be more prescriptive about the messages included.
- 4.83 Dixons Carphone was concerned that without additional context there was a risk of misleading customers because the options shown would not be comprehensive. It suggested additional messages highlighting that the options shown are not an exhaustive list, that not all may be available from the relevant provider, and that customers should fully research the market and review their own needs. Another respondent, [redacted], also thought customers should be given a message encouraging them to explore the market.
- 4.84 One respondent, [redacted], was concerned about customers feeling misled or confused if they are told they may get a better deal elsewhere and then discover they cannot. It referred to the “*odd customer experience*” of being told to look at competitors’ offers. Also, one respondent [redacted] asked for clarification on whether customers on SIM-only tariffs need to be told of the option to move to SIM-only.
- 4.85 Tesco Mobile disagreed with including the option to switch to another provider on the basis that there is no evidence customers are unaware of this option. Vodafone, meanwhile, said that our proposals required providers to present customers with too many options and it requested additional testing of the information to be included.

## Our decision

- 4.86 We have considered the responses and decided that the options messages, as proposed in our December 2018 consultation, are necessary and appropriate as part of best tariff advice. Our modifications to Condition C1 require the end-of-contract notification for residential customers to include details of the options available to the customer.
- 4.87 Our guidance specifies that the options must include advice that customers can:
- a) stay on their existing contract;
  - b) switch to a new contract with the same provider (including but not limited to those referred to as part of the provider's best tariffs);
  - c) switch to a new contract with a different provider; and
  - d) for customers on bundled handset and airtime mobile contracts only, switch to a SIM-only deal.
- 4.88 The advice should also inform customers that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.
- 4.89 Our decision reflects the point that residential customers have a range of providers and services to choose from and may find those choices complex. There is potential for providers to confuse customers and hinder their ability to make decisions that are in their best interests. There is also potential for providers to take advantage of that confusion, offering better deals to active customers at the expense of those who do not switch. It is therefore necessary for them to be given certain key pieces of information about their options.
- 4.90 In making our decision, we have taken into account that some customers are unaware of the potential savings they could make through switching their tariff or provider. Our 2018 quantitative consumer engagement research found that 51% of out-of-contract dual play customers, for example, did not know how much they could save by signing up to a new contract or provider. It also found that a quarter of consumers on bundled mobile handset contracts (and still within their fixed commitment period) were unaware of the possibility of moving to a SIM-only deal at the end of their fixed commitment period.<sup>50</sup>
- 4.91 We note the comment from one respondent, [S<], that said referring to the option of finding a better deal elsewhere may be misleading to customers. It is important that best tariff advice includes information, in clear terms, about the options available. This includes the possibility of switching provider and informing customers that providers may offer new customers better deals and switching may save them money.

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<sup>50</sup> Critical Research, April 2018: *Consumer engagement 2018*, slide 53 and 29. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/117076/Consumer-engagement-quantitative-research-2018-slide-pack.pdf)

- 4.92 The results of our 2019 best tariff advice qualitative research are consistent with our decision. Participants considered that giving consumers additional information regarding their options (such as the fact they could shop around for a new deal or switch to a new provider), alongside the date that their fixed commitment period ends, gave a more complete picture of their options. Even among the less engaged participants, being provided with all the relevant information in a single communication was considered essential. In terms of the experience being odd for consumers, it is open to providers to explain that they are required by Ofcom to deliver this information. This is reflected in our example notification on Annex A3 (although we are not mandating this approach).<sup>51</sup>
- 4.93 We intend to monitor and evaluate the different approaches providers take to implementing the notification and their effect on consumer confidence in switching and engagement in the competitive process. We discuss our plans for monitoring in more detail in Section 9.
- 4.94 We are mindful of the risk of requiring providers to give customers excessive amounts of information. It would not, in any event, be practical in the notification to give the customer a completely comprehensive list of options available to them. Our decision requires providers to outline their main options, so that customers are aware of, and can consider them. It balances the need for full information with the potential risk of overloading customers with too much detail. It will be for providers to determine the precise form of words they use to describe the options, but we expect them to do so in a way that does not mislead customers as to the full range of options available.
- 4.95 In response to the query about whether SIM-only customers need to be informed about the option to switch to a SIM-only deal, our guidance makes clear that this only needs to be included for mobile customers on bundled handset and airtime contracts.

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<sup>51</sup> In our 2019 best tariff advice qualitative research, participants found the information in the notification most useful in prompting them to consider their options (in particular considering whether the best deal for them was with another provider) when they were told that Ofcom required the inclusion of the tariff and why. See paragraph 5.4 for further information on the research.

## 5. The provider's best tariffs

- 5.1 Article 105(3) requires end-users to be provided with best tariff advice at the same time as receiving information about the end of their fixed commitment period. In this section we consider responses to the proposals in our December 2018 consultation regarding the inclusion of information on providers' best tariffs in the end-of-contract notification and set out our final decisions having considered those responses.
- 5.2 In particular, we have decided that providers should include specific tariffs in the end-of-contract notification for residential customers and this is reflected in our modifications to Condition C1 (Annex A1). We first address comments on our proposals and our decision on this below.
- 5.3 We then set out comments and our decisions on our guidance on the provider's best tariffs for residential customers. In summary, our guidance (see Annex A2) will set out that providers:
- a) should include tariffs based on service and usage (where usage is relevant);
  - b) need not specify a particular number of tariffs;
  - c) should include the cheapest tariff available to the customer receiving the advice;
  - d) should include the cheapest tariff available to any residential customer;
  - e) may include a suitable upgrade tariff;
  - f) should include a SIM-only tariff for mobile customers taking bundled handset and airtime packages; and
  - g) should include a bundle tariff option in certain circumstances where customers take multiple services from their provider.
- 5.4 Alongside our decisions on our guidance, we also set out some of the findings of research we commissioned to explore consumer engagement with our December 2018 best tariff advice proposals.<sup>52</sup> The objective of this research was to sense-check that best tariff information consumers need to be given to implement the EECC's requirements would, as we proposed it, achieve its aims and help consumers, or whether any of our proposals were unnecessary to achieve the EECC's objectives. Whilst it is not the basis of our decisions in relation to best tariffs we note below certain points that emerged from the research where relevant.
- 5.5 At the end of this section we also consider the impact of data protection laws on the provision of information in the notifications.

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<sup>52</sup>Jigsaw, 15 May 2019: *Best tariff advice research 2019 - Executive Summary of Findings*. Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/148020/best-tariff-advice-research.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/148020/best-tariff-advice-research.pdf)

## The requirement to include the provider's best tariffs

### Our December proposals

- 5.6 In our draft General Condition, we proposed that providers must show customers their best tariffs within the end-of-contract notification. We proposed guidance for residential customers saying what tariffs providers should include. We said that showing customers specific tariff options was a key part of providers giving best tariff advice.

### Consultation responses

- 5.7 The majority of respondents to the consultation agreed that the inclusion of tariff information within the end-of-contract notification would be useful for customers.
- 5.8 A number of respondents commented on what the meaning of 'best' was. Some respondents noted the term is necessarily subjective and therefore a provider would be unable to determine the best tariff for any individual customer. Dixons Carphone, O2 and Three thought labelling the tariff as the 'best' option would be misleading as they are recommendations from the provider and may not be the best value tariff available in the market.
- 5.9 Many respondents commented on the amount of information provider tariffs would add to the notification and were concerned this could be confusing to customers, affecting their ability to understand the notification, particularly vulnerable customers. Various respondents said notifications should be clear, concise, as well as free of jargon and marketing information.
- 5.10 Some respondents suggested that Ofcom should be more prescriptive in the messaging and design of notifications. uSwitch wanted more information presented as part of the provider's best tariff. For example, including consumption data, noting whether tariffs are based on service or usage, and whether the speeds shown meet or exceed the customer's current speeds.
- 5.11 Several respondents thought that, the notification could lead to less engagement in the wider market as customers would just rely on the tariffs shown.
- 5.12 Some respondents stated that implementing the provider's best tariff as proposed would require significant development work and requested that Ofcom consider limiting its complexity. Three stated that the methodology to demonstrate compliance with Ofcom's requirements both internally and externally would also incur additional implementation costs.
- 5.13 In addition, Three were concerned about potential regulatory consequences of not correctly identifying the 'best tariff' for the customer and of providing potentially misleading information.
- 5.14 Sky and TalkTalk raised the issue of whether the provider's best tariffs should include tariffs available across other brands that are part of the same corporate group.

## Our decision

- 5.15 Our modifications to Condition C1 require end-of-contract notifications for residential customers to include the provider's best tariffs. Having considered the responses carefully, we have decided that specific tariffs are a key part of the best tariff advice required by Article 105(3) of the EECC and should be included in the notifications provided to residential customers.
- 5.16 We have considered responses in relation to our approach leading to less engagement with the wider market. The complexity of choices customers face means it can be difficult for them to identify specific tariffs which suit them. Part of best tariff advice, therefore, should be information which can act as a prompt for the customer to consider their options more broadly and enable them to understand what suitable tariffs are available. Having this information, alongside the options messages, will enable them to make detailed comparisons between the choices available and make an informed decision about whether to stay on their existing deal, sign up to a new one or switch provider. The inclusion of specific best tariffs is, accordingly, necessary in our view to give meaningful effect to the consumer protection objectives that lie behind Article 105(3) of the EECC.
- 5.17 The need for this information is reflected in our research. In our 2018 end-of-contract notifications qualitative research, participants generally thought the inclusion of a provider offer in end-of-contract notifications desirable.<sup>53</sup> In our 2019 best tariff advice research the majority of participants told us they felt engaged and empowered by the tariff information provided within the notification. They noted that currently they could find it hard to work out what the best (or even a 'good') deal would be for them, and that this tariff information would prompt them to consider what they are paying for and whether their deal is still right for them. For those participants who were more engaged with their options, this tariff information was still felt to be useful reference information.
- 5.18 We note the various comments on the meaning of 'best' and acknowledge that in general the best tariff for any particular customer is a subjective assessment for them to make. Our guidance sets out the information which providers should include in the notification so that they comply with the EECC's requirements and in order that customers can make that assessment. The information will help customers to understand the choices available to them, so they can determine for themselves the tariff that would best meet their needs.
- 5.19 As long as they meet the requirements of the General Condition, follow our guidance, and comply with general consumer law, providers can present the information in a form which is appropriate for the customer receiving the advice. As noted in Section 4, we are not prescribing the language to be used in the notification, so providers do not need to describe the tariffs shown as the 'best' if they think this would confuse customers. It is important that providers ensure they set out enough, sufficiently clear, information to avoid misleading customers. As long as they comply with their data protection obligations,

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<sup>53</sup> Jigsaw, July 2018: End-of-contract notifications: Attitudes to and understanding of alternative content option, slide 15.

providers can also add any messages they think would help customer understanding, such as the assumptions on which the information provided is based.<sup>54</sup>

- 5.20 We have taken account that some respondents said we should be more prescriptive with the language they must use, and include additional information beyond our proposals (such as current consumption). As set out in Section 4, we consider that allowing providers flexibility to adapt their language to their particular style will ensure they are able to communicate with their customers in the most effective way. We have specified the information that in our judgment is necessary to achieve the aim of providing customers with useful best tariff advice, whilst seeking to avoid overloading them with too much.
- 5.21 We also note providers' comments about the cost and complexity of giving customers the required information. An important factor in our judgment is the need to ensure that the fully harmonised mandatory requirements of Article 105(3) of the EEC are implemented in a way that secures its objectives in a useful and effective way. We have set out in each respect how the decisions we have made are necessary to achieve that.
- 5.22 Nonetheless, as we set out in Section 9, we have extended the implementation period for our requirements to give providers sufficient time to develop the necessary systems. We also remain of the view that the notification does not need to include tariffs available from other providers. To include these, providers would need to continually ensure they were up to date with the best tariffs available from other providers. That would be an extremely complex task given the number of services available on the market at any given point. This complexity means that there is also a risk of inaccuracies and misunderstanding, which may result in customers receiving incorrect information and lead to confusion and frustration.
- 5.23 Additionally, we will not require tariff information to be offered from multiple brands from the same corporate group. It may be confusing for customers receiving that information, particularly as they may not necessarily be aware that different brands are part of the same corporate group and it will not be clear to them why they are receiving a communication from a company that they do not identify as their current provider.
- 5.24 As set out in Section 9, we will monitor customer engagement and the implementation of the requirements, including the provider's best tariffs. We will review the requirements in the future if necessary.

## Guidance for the provider's best tariffs

- 5.25 Below we set out our decisions on the guidance in relation to the requirement to include the provider's best tariffs in end of contract notifications.

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<sup>54</sup> Although we note that, if a customer were to sign up to any tariff shown, they must subsequently be given all relevant contract information at point of sale before making their final decision (General Condition C7 & C8), so not all this information is necessarily required in the notification.

## Tariffs based on usage or service packages

### Our December proposal

- 5.26 We proposed in the draft guidance that the provider's best tariffs should be based on the customer's previous usage ('usage based'), where relevant, and otherwise based on packages that are most similar to the services the customer currently receives from their provider ('service based').

### Consultation responses

- 5.27 Many respondents thought providing a tariff based on usage was useful because it would be an accurate reflection of a customer's needs and mitigate against customers choosing packages not suitable for them. However, many wanted to be able to take into account customers' future usage needs. That would include, for example, considering trends in data usage and faster broadband speeds over time.
- 5.28 Some providers said a customer's previous usage could have been constrained by the allowances provided in their contract and may not therefore reflect the usage that would best fit their needs going forward. One respondent, [3], highlighted that basing a tariff on usage may produce tariffs which the customer considers irrelevant or unhelpful. BT also highlighted that if, when choosing their existing contract, a customer deliberately chose a package with an allowance in excess of their actual usage, they may have done so because they value the certainty that they will not exceed the allowance, or if their financial circumstances change.
- 5.29 Some providers were concerned about how practical it would be to base tariffs on customer usage. One respondent, [3], stated the customer level analysis necessary to identify these requirements would require significant investment. First Utility highlighted that usage information will be difficult for resellers to identify as not all of them have access to the customers' usage data.
- 5.30 BT noted that, when basing tariffs on a customer's service packages, it may be difficult to identify the most similar package. It also noted that relevant options may be excluded. This is because devices (e.g. new mobile handsets), technologies (e.g. 5G or fixed wireless broadband) and service options may have changed substantially since the customer took out their contract. It said providers should have the flexibility to pick the closest package they consider appropriate, so long as it would not result in a deterioration of service and they are clear to the customer the reason why the tariff is most likely to be suited to their needs.

### Our decision

- 5.31 We have decided to amend our guidance on the tariffs providers should show as part of best tariff advice. It now specifies that they should include tariffs based on both service

- and usage (where usage is relevant to the customer's particular package and the tariff option based on usage is different to the service-based tariff option).
- 5.32 In making this decision, we have reflected carefully on respondents' comments and we note our research about how both service and usage-based tariffs may have a role to play in customers' choices. We also take into account that both tariffs have merits and limitations, and that both may have a role to play in best tariff choices. We agree that to prompt and enable customers to make informed choices about the best deal for them in line with the objectives of the EECC, both types of tariff could be helpful.
- 5.33 As set out above, the inclusion of provider tariffs enables customers to make detailed comparisons between the choices available to them if they remain with their current provider (as well as helping them to make comparisons with the offers available from other providers). There are two important options a customer may want to consider if they are remaining with their existing provider:
- a) re-contracting with similar services to those previously contracted for; and
  - b) moving to a tariff with slightly different services reflecting the experience of how they have used their services or an expectation of how they may be used in the future.
- 5.34 Including the service-based tariff will make it easier for customers to assess how a new deal compares to their current one. Where relevant, a tariff based on usage might better help a customer consider their needs and the most suitable tariff to meet them.
- 5.35 Including both types of tariff, where relevant, is consistent with our previous qualitative research, outlined in our December 2018 consultation. That research found that informing customers about their usage data as part of an end-of-contract notification would help them make a more informed choice.<sup>55</sup>
- 5.36 In particular, that data was seen as helpful if it highlighted where a customer was paying for a service or product which they were not using. A tariff based on usage may not be relevant in all circumstances (for example for unlimited broadband services) but, where it is relevant, including both a usage-based and a service-based tariff will help the customer compare the value they may get from (i) moving to a similar package to their current one with (ii) a different package that may be more suited to their needs.
- 5.37 Our research also reflects that including both types of tariff ties in with the way consumers tend to consider their options. In our 2019 best tariff advice research, participants felt, having assessed a range of options, that if they could only be presented with a single tariff, then the cheapest service based on a similar package was the option they preferred. This is because it represented for them the cheapest value proposition if there were no changes to the service they received. However, when it was presented alongside a tariff option based on their usage, they felt they would be able to make meaningful comparisons with other tariffs, as both are essential value indicators. They felt they could use this information for negotiating with their provider or looking elsewhere. The overall indication

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<sup>55</sup> Futuresight, April 2018. *Consumer Engagement with Communications Services*. Page 52. Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/113458/Engagement-Qualitative-Research-Report,-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/113458/Engagement-Qualitative-Research-Report,-2017.pdf)

from that research, therefore, is that the highest potential levels of customer engagement would be attained by showing them tariffs based on service alongside tariffs based on usage.

- 5.38 Considering the relevant points in the round, we have decided that the provider's best tariffs should include both types of tariff, unless the provider can demonstrate that a measure of usage is not relevant to the services the customer receives, in which case only service-based tariffs should be shown. Where a provider identifies that the best usage-based tariff option for the customer would be effectively the same as the service-based tariff option, it need not present both.
- 5.39 The service-based and usage-based tariffs included should relate to the customer's main services and the associated aspects of those services. We explain what we mean by this term in paragraphs 4.46 – 4.49.
- 5.40 We accept that requiring a usage-based tariff to be based solely on previous historical usage may not result in tariffs that are most useful to the customer in the future. Therefore, we have also amended our guidance so that it now specifies that tariffs based on usage should take into account the customer's likely usage of their main services and the associated aspects of those services.
- 5.41 We expect that, in considering consumption, providers will take account of the customer's previous usage. This will be the key piece of objective information relating to that customer specifically. Providers could use it to project the customer's likely future consumption based on clear trends in their usage patterns. Providers could also use overall trends in customer usage to help make that judgement.
- 5.42 We also acknowledge that respondents made comments that tariffs based on service packages might fail to take into account changes in technologies or services. However, we have decided not to amend our guidance as we think that specifying services 'most similar' to the customer's current services gives providers sufficient scope to take into account any such changes that are important.
- 5.43 When considering whether a service is similar to that which the customer currently receives, providers should make reasonable judgements as to whether a new technology in fact constitutes a similar service and is one of their best tariffs. For example, if a new technology provides a similar or superior experience to that the customer currently receives at no additional cost. We also note that providers have the option to present an upgrade tariff (and, as explained in paragraph 5.83 below, we are no longer specifying that this upgrade tariff needs to be the 'cheapest'). This could be used to present tariffs based on new technologies or services.
- 5.44 We do not expect that our decision as to the types of tariff to be included in notifications would materially increase providers' implementation costs above those expected to be incurred from our December proposals. In our December consultation, we considered both service and usage-based tariffs and proposed the inclusion of the latter where relevant. We recognised that usage-based tariffs may be costlier for providers to implement than service-based tariffs. We are now expecting the inclusion of both tariffs in our

notifications, but in doing so we take account that in some cases providers would have defaulted to a service-based tariff in any event (where usage is not relevant). We therefore expect that the decision logic, and associated system development costs, required to implement the proposals in our December 2018 consultation would have been likely to include a consideration of both a usage-based and service-based tariff. We respond further to respondents comments on the cost of implementing the best tariff provisions in Section 10.

## Number of tariffs

### Our December proposal

5.45 We proposed in our draft guidance that providers should show residential customers at least one and up to three tariffs. We said this balanced the need to give customers a selection of relevant tariffs without giving them excessive information which over-complicates their assessment.

### Consultation responses

5.46 BT agreed with our proposal, noting it was the right balance between giving customers sufficient choice, and not confusing them with too much information so as to over-complicate their decision. Vodafone thought that three tariffs was too much information for less engaged customers. Another respondent, [X], noted that multiple choices could be seen as contradictory and generate confusion and would also increase the complexity and costs of implementation.

5.47 Three thought that providers should not be limited to three tariffs as customers should see a variety of offers. It also noted that mobile customers may not be able to receive an upgrade tariff if only three tariffs are allowed as these customers must also receive the SIM-only tariff. It wanted additional tariffs to be allowed for these customers.

### Our decision

5.48 We need to strike a balance between ensuring customers see a selection of different relevant tariffs, while not being presented with excessive information which may over-complicate their assessment and the choices they have to make. We agree with respondents that the guidance should be clear and also flexible enough to ensure all relevant tariffs are included.

5.49 Our final guidance does not, therefore, specify the number of tariffs providers should show in all cases. Instead, we have decided that it should specify the tariffs providers should include in particular circumstances.

5.50 This approach is likely to mean that most customers will be told about three or four tariffs (and possibly up to five where a customer takes a bundled mobile handset and airtime

deal).<sup>56</sup> It makes clearer our expectations of providers, while providing them with appropriate flexibility (within the limits of the tariffs required to be included in the relevant circumstances). For customers, this set of tariffs should enable them to understand what suitable tariffs are available, so that they can make appropriate comparisons between the choices open to them and an informed decision.

- 5.51 In deciding on our approach, we have considered the concerns raised by Vodafone and the confidential respondent, [X], about the potential for multiple tariff options to overload or confuse customers. We note, however, that other respondents agreed with our proposals or sought the inclusion of additional tariffs they said are relevant. Participants in our 2019 best tariff advice research felt similarly (in general, agreeing that three tariffs offered a reasonably complete picture, helping them to understand what package they were currently on and what might be a better tariff for them).
- 5.52 The position we have set out in our guidance reflects that customers can benefit from seeing a range of tariffs which demonstrate what is available. To avoid information overload, however, that range should be appropriately limited. The modifications we have made to our guidance make clear what we think are the appropriate tariffs in relevant cases, taking account of the objectives of Article 105(3) of the EECC as set out in this statement, without the need for additional constraints on the number of tariffs provided.

## **Inclusion of the cheapest tariff available to the customer receiving the advice**

### **Our December proposal**

- 5.53 We proposed in our draft guidance that a provider's best tariffs should include the cheapest tariff available to the customer receiving the advice. We said a key part of a customer's choice about whether to remain with their provider or not was to know the cheapest deal they could get if they stayed.

### **Consultation responses**

- 5.54 Some respondents thought that the cheapest tariff might not necessarily be the 'best' and noted other factors that could form part of an assessment of the value of the services, such as activation charges, any inclusive calls, length of any promotional period, length of the contract, device or equipment charges and incentive rewards. BT noted that providers

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<sup>56</sup> Customers who take fixed services are likely to be shown two or three tariffs (the cheapest service-based tariff available to them (assuming a usage based-tariff is likely less relevant), the cheapest tariff the provider offers any customer (see further below) and, if the provider chooses, an upgrade tariff). Those who take SIM-only mobile services are likely to be shown three tariffs (service-based, usage-based and upgrade tariffs). Bundled mobile handset and airtime customers are likely to be shown four tariffs (service-based, usage-based, upgrade and SIM-only tariffs). In principle, such a mobile customer could also be shown a fifth tariff: the cheapest tariff available to any customer. However, we do not think this will be common as mobile providers do not typically target discounts to new customers.

could avoid notifying customers of the best acquisition deals by increasing the monthly price and giving away non-price benefits such as vouchers or cash rewards.

- 5.55 Some respondents wanted our guidance to limit the types of prices from which the tariffs in the notifications were drawn. In particular, they said providers should only have to provide the price available on their website, and not have to include the discretionary prices available from customer service advisers/retention teams or discounts based on geography or particular customer groups. Sky and BT thought they should not have to include prices offered via affiliates and noted these were significant channels for new customer acquisition. Several respondents noted that, if providers were required to show customers tariffs from these additional categories or sources, some of these offers may be withdrawn because this would be a more practicable and appropriate way of ensuring compliance with the requirement.
- 5.56 Conversely, uSwitch thought that, for customers to trust the price shown in the notification, it should always be the best retention price the provider can offer. One respondent, [§<], noted there could be a significant difference between the cheapest price shown on the provider's website, and those offered by its outbound retention channels.
- 5.57 Dixons Carphone also said that, in order to be the 'best offer' from the provider for comparison in the market, the price must be the cheapest from any channel or customer engagement route. However, it noted that this would be impracticable and suggested instead that notifications should include prescribed messages that the tariffs shown are recommended based on provider's assumptions and that customers could get a better deal by researching the market. It also suggested that, where an affiliate provided a notification on behalf of a provider, the tariffs shown to the customer could be any that the affiliate offers. It said this would offer more choice than the provider's tariffs alone.
- 5.58 Many respondents also wanted further clarity on how long tariffs should be available for if they are to be included in the notification. Respondents noted that offers can change very quickly, and that from time to time providers hold flash sales or offer time limited deals. This means that short term offers, if included in notifications, might not be available if the customer does not contact the provider immediately. Equally, if such offers occur shortly after the notification is sent, the tariffs included in it may no longer be the best deal. uSwitch thought the tariffs shown should be accurate for a reasonable period of time after the notification was sent and that, if customers contacted their provider to re-contract, they should be informed if better deals have subsequently become available.

## Our decision

- 5.59 We consider that, to fulfil the requirement to provide best tariff advice, the cheapest tariff available to the customer receiving the notification should be included as part of the provider's best tariffs. A key aspect of the customer's choice of whether or not to re-contract with their provider is to know the cheapest deal they could get if they stayed.
- 5.60 We do not consider that 'cheapest' only refers to the monthly price. Providers should weigh up the different factors that affect the overall cost of the contract to customers. All

of the elements noted by respondents, including activation charges, any inclusive calls, length of any promotional period, length of the contract, device or equipment charges and incentive rewards are factors providers might reasonably consider. We would expect them to be able to justify objectively the basis on which they identify tariffs as their cheapest.

- 5.61 We have carefully considered respondents' submissions about the nature and availability of the cheapest tariffs providers should show customers. In particular, those about the tariffs which should be regarded as the provider's cheapest for the purposes of the notification and how long should they be available to customers receiving those notifications. Taking account of those responses, we have decided that our guidance should make clear that, at a minimum, the cheapest tariffs should be those the provider publishes and makes generally available to the public, for example via its website or in its in-store advertising (unless it chooses to make a particular cheaper tariff available to the customer receiving the notice, in which case it may include that instead).
- 5.62 We acknowledge that, where notifications include the cheapest generally available tariff, a customer may be able get a cheaper price than that shown by negotiating directly with the provider or purchasing via a third party. However, we also take into account that the requirements need to be implemented in a practical way so that they give customers useful and effective information. Our approach – which means providers tell customers about prices that it advertises to the general public and will be available to them – will provide that without unduly hindering dynamic approaches to pricing and short-term offers. We also keep in mind that another key objective of the best tariff requirements is to prompt customer engagement with the market. While a customer may sign up to one of the tariffs provided in the notification, they may also use the tariff information (and information on the options available) to seek out different tariffs both with their existing provider and across the market more generally. Nonetheless, there is also nothing that prevents providers from presenting alternative tariffs to their customers, where they are lower than the cheapest generally available tariff and the provider decides to make them available.
- 5.63 As to the point raised by Dixons Carphone on offers from third parties, nothing in the General Condition or our guidance prevents providers from entering into commercial arrangements with a third party to deliver end-of-contract notifications on their behalf. However, the EECC, and so our General Condition, requires that the tariffs shown are the provider's. Therefore, as an example, where a customer is signed up to O2 by a third party, we would only expect O2's tariffs to be included in the notification sent to that customer.
- 5.64 In terms of how long tariffs are available, we consider that cheapest tariffs can include short term offers but they should be available to the customer when they receive the notification and at least until the end of the fixed commitment period of their contract. In taking this view, we note again that the provider's best tariff information should enable customers to make detailed comparisons between the actual choices available to them. Accordingly, for the tariffs shown to be considered available to the customer, they must be able to sign up to them as of the date they receive the notification and at any time at least until the end of the fixed commitment period of their contract.

- 5.65 Providers should also consider what information needs to be presented about the tariffs to ensure the notification is not misleading. This could include, for example, the contract duration, in order to clarify the cost of the contract by showing a price in relation to the length of time that it must be paid. It would also include ensuring that nothing in the notification suggests to the customer that the price shown is the cheapest the provider would ever offer if that is not the case, for example because it has other retention offers that may be cheaper.
- 5.66 As set out in the section above, our guidance now makes clear that providers should include in notifications both service package-based and usage-based tariffs (where relevant). We have therefore also added to the guidance that this should be on the basis of the cheapest such tariffs available to the customer. The guidance (see Annex A2) makes clear the provider should include:
- a) a tariff, based on the services the subscriber receives, that is the cheapest available to that subscriber; and,
  - b) if not the same as (a), a tariff, based on the subscriber's usage, that is the cheapest available to that subscriber (unless the provider can demonstrate that it is irrelevant to the services the customer receives).

## **Inclusion of cheapest tariff available to any customer**

### **Our December proposal**

- 5.67 We proposed in our draft guidance that the tariffs set out in the notifications should include the cheapest tariff the provider makes available to any customer. The tariff should be included even if the specific customer to whom the advice is sent is not eligible for it (for example, if it is only offered to some categories of customer, such as new ones). We said this was important to help customers assess the favourability of the terms on which their provider is prepared to contract with them and make a choice about what deal is best.

### **Consultation responses**

- 5.68 Decision Tech, Dixons Carphone and [redacted] agreed with our proposal. Decision Tech said the tariff would be beneficial for customers as it is a good indication of offers available in the market, even if they are unable to get the deal with their current provider. Dixons Carphone thought it would encourage providers to be more transparent with upgrade and retention pricing by highlighting the extent to which some customers are paying more.
- 5.69 Some respondents however, thought that providers should only show tariffs available to the customer receiving the notification. Gamma contended that the cheapest overall tariff would not be "clear and comprehensible" to customers as required by our proposed general conditions.

- 5.70 BT said a statement that a customer might get a better deal if they switched to another provider as a new customer would be sufficient to achieve Ofcom's objective. It also thought the inclusion of tariffs which are not available to customers could result in providers making acquisition offers relatively less attractive and it was concerned this would dampen competition for new customers and reduce incentives to switch.

## Our decision

- 5.71 We note respondents had mixed views on this aspect of our proposals, and that a number of them opposed it. After carefully considering the responses, we have decided that providers should include, as part of their best tariff advice, the cheapest tariff available to any customer. In our view, this is an important part of a customer's ability to assess the favourability of the terms on which their provider is prepared to contract with them. They can use this tariff to help make an informed choice about whether to stay with that provider – in the knowledge they may not be receiving its best tariff – or switch. We agree in this regard with Dixon Carphone's and Decision Tech's consultation responses.
- 5.72 The ability to make an informed choice is a central aspect of the consumer protection Article 105(3) is meant to provide. Where a provider's best tariffs expose considerable differences between their prices for in- and out-of-contract customers, customers will be able to identify whether remaining with their provider is in their best interests or if they lose out by doing so (including an indication of the extent to which they may be treated less favourably as an existing customer).
- 5.73 That information will help customers decide whether to switch and take advantage of the benefits of competition between providers (by becoming a new customer of another provider). Receiving such information might also encourage customers to engage with their provider to negotiate their price or package. Without advice on the cheapest deals, we do not consider that customers will receive meaningful best tariff advice.
- 5.74 The impact and importance of including the cheapest tariff for any customer was reflected in our 2019 best tariff advice research. This qualitative research found that the cheapest tariff available to any customer often left participants feeling frustrated. However, it equally confirmed that this tariff was the most likely to prompt engagement, leading the participants to claim that they would either contact their existing provider or use the figure as a 'bargaining chip' when shopping around. They agreed that the tariff should be included as it provided customers with information that made them aware of what is available on the market.
- 5.75 The research also reflected the importance of making clear why this tariff is shown to customers. Participants found the information most useful in prompting them to consider their options (in particular considering whether the best deal for them was with another provider) when they were told that Ofcom required the inclusion of the tariff and why.
- 5.76 That latter point chimes with the consultation responses that said inclusion of this tariff may confuse consumers. We agree that its inclusion should not occur in such a way as to

have this effect. To be useful and effective, customers must be able to understand and use essential pieces of best tariff advice.

- 5.77 An important counterpart, therefore, to the inclusion in notifications of the cheapest tariff available to any customer is that providers should also explain why it is shown to the customer even though they are not eligible for it. We have added to our guidance to make clear that, in addition to telling a customer they are not eligible for a tariff and explaining why, providers should also tell customers why that tariff is presented to them. An example of this text is included in our example notification in Annex A3 (although we are not mandating the use of this particular wording).
- 5.78 The cheapest tariff available to any customer should be based on similar services to those the customer currently receives. This would provide a baseline which ensures customers can effectively make a direct comparison between (i) the cheapest tariffs available to them for their services and (ii) the cheapest tariff for those services available to any customer.
- 5.79 We note BT's comment regarding the potential adverse effect of including this tariff on competition for new customers. However, we do not think that this effect would necessarily arise, as showing customers this tariff promotes their ability to make informed choices and penalises providers for not offering sufficiently attractive deals. In any case, our clarification that providers can select the best tariff from their publicly available tariffs further limits the risk of such an effect from occurring (see Section 10 for further discussion).

## Inclusion of an upgrade tariff

### Our December proposal

- 5.80 We proposed that one of the tariffs given to a customer as part of the provider's best tariffs could be an upgrade tariff, if the provider considers this to represent a customer's best tariff.

### Consultation responses

- 5.81 No respondents explicitly disagreed with our proposal. BT stated that it was not clear what 'cheapest' meant in the context of an upgrade tariff. It thought providers should have the flexibility to show tariffs they consider appropriate so long as they can demonstrate why that decision was made rather than equate it to the 'cheapest'. Three thought a single upgrade tariff is not enough and customers may want to see additional offers to compare and consider.

### Our decision

- 5.82 We remain of the view that the provider's best tariffs can include an upgrade tariff. The additional tariff option can be used by providers to show customers something they may consider to be their customer's best tariff because it is an improvement or expansion of their service that better meets their needs. Where they choose to include an upgrade

tariff, providers should have a reasonable objective justification for regarding it as one of the best tariffs for that customer.

- 5.83 We have removed the word ‘cheapest’ from our guidance in relation to upgrades as we recognise this was confusing. As long as providers can justify an upgrade tariff as one of the best tariffs for that customer, it is not necessary to further restrict the tariff that can be shown. We would expect that, in any case, providers will have an incentive to show upgrade tariffs that are appropriate to the customer’s needs, as they will want the tariff to be as attractive to the customer as possible.
- 5.84 We continue to specify only one upgrade tariff in the guidance. The main purpose of the best tariff requirements is consumer protection, not marketing. One upgrade tariff is sufficient to prompt a customer to consider if any enhancement or expansion of their services might best meet their needs.
- 5.85 Both our 2018 end-of-contract notifications research and our 2019 best tariff advice research reflect the value to customers of being shown an upgrade tariff. Participants in both studies welcomed its inclusion as giving them an option which would be a ‘step-up’ from their current package, specifically suited to them. Our research suggests that customers would choose the upgrade option if there was a marginal increase in price for a better service.

## Inclusion of a SIM-only tariff

### Our December proposal

- 5.86 We proposed that one of the tariffs presented to a customer with a bundled mobile handset and airtime contract should be a SIM-only deal (the cheapest appropriate such tariff).

### Consultation responses

- 5.87 Some respondents (Three, BT and [X]) agreed that bundled handset and airtime customers should be told about a SIM-only tariff, but others said this may not always be appropriate or useful for customers who typically buy bundled contracts. One respondent, [X], stated that customers may be happy with their existing bundled handset and airtime deal and may not want SIM-only offers.

### Our decision

- 5.88 We acknowledge that some customers may be happy to sign up to a new bundled handset and airtime deal. A significant number are also generally aware of the availability of SIM-only tariffs.<sup>57</sup> Nonetheless, we have decided that providers should expressly draw their customers’ attention to such a tariff. Our guidance specifies that one of the tariffs

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<sup>57</sup> In our 2018 end-of-contract quantitative research, around 25% of respondents said they were unaware of SIM-only tariffs. Critical Research, April 2018: *Consumer engagement 2018*.

presented to a customer with a bundled mobile handset and airtime contract should be a SIM-only deal. It should be the cheapest available SIM-only tariff based on the services the customer currently receives (taking account of the different factors that affect the assessment of the cheapest tariff as described in paragraph 5.60 above).

- 5.89 Given that an important option for these customers is retaining their handset and switching to a SIM-only tariff, reminding them of this at the time when they have the opportunity to freely engage with the market and change deals is an important part of the consumer protection the EECC seeks to provide. It will draw this tariff to their attention as an alternative to remaining on their current deal or upgrading their handset and signing up to a new bundled handset and airtime tariff.
- 5.90 Our 2019 best tariff advice research is consistent with our decision on these points. Participants who were in-contract for bundled handset and airtime services initially felt they could not see themselves taking the SIM-only option but tended to become more receptive to it when they discovered the price of their bundled contract would remain the same at the end of the fixed commitment period. They acknowledged that the SIM-only option would be a useful tariff for those not interested in another handset.

## Bundled services

### Our December proposal

- 5.91 We proposed in our draft guidance that, where the customer has other services with the same provider, the best tariffs the provider shows them should be for bundled services. We said that many customers take a bundle of services from their provider because it is cheaper or otherwise in their interests to do so and that providers' best tariffs should reflect that.

### Consultation responses

- 5.92 BT agreed with our proposal. Sky, however, stated that the inclusion of a bundled tariff is an additional tariff for customers to understand and could add to information overload. It also said the proposal would be complex for providers to implement as they would have to develop templates for every possible tariff combination. Sky suggested that bundled tariffs may be most appropriate in cases where there is a technical dependency between services but, where those do not exist, separate notifications for the different services should be allowed. It said the requirement should be limited to making the existence of the pricing dependency clear in the notification. Otherwise, it said, there is a risk providers may remove the dependencies, "*reducing pricing options to the detriment of consumers.*"

### Our decision

- 5.93 We have considered the points Sky and BT made and have also considered consistency with other aspects of our guidance as explained below. We have decided that providers should tell customers about tariffs for a bundle of services, where they receive more than

one public electronic communications service<sup>58</sup> from the same provider under the same contract or under financially linked or interdependent contracts<sup>59</sup> whose fixed commitment periods end at similar times.<sup>60</sup>

- 5.94 Significant numbers of customers already buy multiple services from a single provider. Often, it is in their best interests to bundle their services, as there can be price discounts or service add-ons available. Any communication advising customers of their best tariff options should reflect that.
- 5.95 We do not agree that customers would find it too complex or burdensome to assess these tariffs. Customers receiving them will already have bundled their services, or at least have considered taking multiple services from the same provider. They are likely to already have experience in considering these sorts of tariffs. The tariffs provided will enable them to consider bundling their services again.
- 5.96 Our guidance therefore sets out that, where a customer already has multiple services from a provider, the best tariff advice it gives the customer should in most cases (see paragraph 5.98 below) relate to bundles of those services. We have, nonetheless, made some minor clarifications to our guidance to ensure consistency with other parts of it.
- 5.97 In particular, in Section 6 we set out the circumstances in which providers should aggregate the end-of-contract notifications they send customers. We say they should send a customer a single aggregated notification where the customer receives multiple services under separate financially linked or interdependent contracts whose fixed commitment periods end at similar times (or which have no such fixed periods). We have modified our guidance on best tariffs to correspond with this.
- 5.98 Overall, this means providers should include bundled tariffs in end of contract notifications in these cases:
- a) First, where multiple public electronic communications services are provided under the contract subject to the notification (e.g. a dual or triple play contract).
  - b) Second, where the provider supplies multiple public electronic communications services to the customer, but some are provided under the contract subject to the notification and some under a financially linked or interdependent contract, and either:
    - i) the 31-day window<sup>61</sup> for the financially linked or interdependent contract overlaps with the 31-day window for the contract subject to the notification; or
    - ii) the financially linked or interdependent contract is not subject to a fixed commitment period when the notification is sent.

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<sup>58</sup> In relation to non-communications services sold as part of a bundle with a communications service, see footnote 45 in Section 4.

<sup>59</sup> See paragraphs 4.67 – 4.72 for an explanation of this term.

<sup>60</sup> Or which have no such fixed period(s).

<sup>61</sup> See paragraph 6.16 for an explanation of this term.

- 5.99 Showing the customer these tariffs in these cases will ensure they are aware of the best tariffs applicable to the set of services they are (contractually) free to group together, where it may be in their best interests to do so.
- 5.100 As to complexity of implementation, we note Sky's submissions. However, the EECC imposes mandatory requirements in relation to best tariff advice. The popularity and customer benefits of bundled services mean that, for customers to receive advice that enables them to choose the tariffs that best suit them, these should include tariffs for bundles in relevant circumstances. We would expect providers to take a reasonable approach to identifying tariffs that match customers' existing services and usage patterns.

## Interaction with GDPR

### Our December proposal

- 5.101 In our December 2018 consultation we noted that the EECC is without prejudice to measures taken at EU or national level (in accordance with EU law) relating to the protection of personal data and privacy.<sup>62</sup> The requirements of the EECC, and therefore also our draft general conditions, would accordingly be subject to the requirements of the General Data Protection Regulation (GDPR) and related national legislation.<sup>63</sup> This means, amongst other obligations, that in preparing and sending end-of-contract notifications (and annual best tariff notifications – see Section 7), providers must process personal data lawfully, fairly and transparently.
- 5.102 In addition, we highlighted that the GDPR gives individuals an absolute right to object to their data being used for direct marketing purposes.<sup>64</sup> We noted that elements of the proposed end-of-contract notification (and annual best tariff notification) would likely be considered direct marketing (e.g. the provider's best tariffs). Where a customer had opted-out of direct marketing, we expected the provider to send that customer an end-of-contract or annual best tariff notification that contains as many of the required elements as lawfully possible.

### Consultation responses

- 5.103 Some respondents raised concerns that the best tariff proposals may contravene the GDPR and requested clarification on how the two requirements could be aligned.
- 5.104 Three thought the notification should be labelled as a communication mandated or supported by Ofcom. It thought that would address the issue of customers considering the notification marketing and reduce hostility from those who had explicitly opted-out of receiving marketing.

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<sup>62</sup> EECC, Article 1(3)

<sup>63</sup> E.g. the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

<sup>64</sup> Article 21, GDPR

- 5.105 O2 questioned the appropriateness of sending annual best tariff notifications to those out-of-contract customers who have opted-out of marketing.
- 5.106 TalkTalk stated that it did not believe any of the required information in the notifications could reasonably be classified as marketing information. It requested Ofcom work with the Information Commissioner to produce joint guidance to clarify this. TalkTalk was worried that “overzealous” interpretation of the data protection laws could undermine the effectiveness of the proposals.

## Our decision

- 5.107 In light of the requests for greater clarity from industry, we have engaged with the Information Commissioner’s Office (ICO) in relation to end-of-contract and annual best tariff notifications. In particular, we considered whether (and to what extent) it is possible for providers to comply with the requirements we are imposing when sending notifications to customers that have opted out of direct marketing<sup>65</sup> (“opted-out customers”). Our assumption at the time of writing the December 2018 consultation was that certain elements of the proposed notifications would be considered direct marketing. This led us to the position we set out in the consultation that providers should comply with our requirements as far as possible, whilst always remaining in compliance with data protection legislation.<sup>66</sup>
- 5.108 However, we now consider that it is possible to include all of the required elements in end-of-contract and annual best tariff notifications for opted-out customers.<sup>67</sup>
- 5.109 The ICO reviewed the example end-of-contract and annual best tariff notifications which can be found in Annex A3 and considered that these would be appropriate to send to opted-out customers. They had the following specific comments on the example notifications:
- a) they considered the top half of the notification<sup>68</sup> to be providing contract-related information to the customer, rather than being promotional;
  - b) in relation to the bottom half of the notification,<sup>69</sup> they considered the reference to Ofcom requirements to be helpful to consumers in explaining why they are receiving the notification;
  - c) they considered the tariff boxes at the end of the notification to be providing neutral information about available packages, rather than promoting one particular deal over another. As such, they did not consider this content to be marketing.

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<sup>65</sup> Direct marketing is defined in section 122(5) of the Data Protection Act 2018 as: “*the communication (by whatever means) of advertising or marketing material which is directed to particular individuals*”.

<sup>66</sup> Reflecting the fact the requirements of the EECC are subject to the requirements of the GDPR.

<sup>67</sup> By required elements, we mean the various pieces of information to be included in those notifications as a result of Conditions C1.11 and C1.18, and the associated guidance on those conditions (see Annexes A1 and A2).

<sup>68</sup> i.e. up to and including the two tariff boxes midway down the page.

<sup>69</sup> From “Thinking about a new contract....” onwards. The bottom half of the notification sets out the provider’s best tariffs.

- d) By contrast, a message explaining that a tariff had been included for a particular customer because of their individual usage or characteristics would likely be considered marketing, as it would be promoting a certain type of package to that customer.<sup>70</sup>
- 5.110 The ICO also considered the example of a notification sent by SMS (see Annex A3) to be appropriate to send to opted-out customers. However, they considered that including an invitation to click through for more information “*including our best tariffs*” may be problematic.<sup>71</sup> Our example SMS notification contains alternative language which the ICO thought more appropriate.
- 5.111 We consider that it is possible to align our requirements with the direct marketing rules. We therefore expect providers to comply fully with our modifications to Condition C1 and the associated guidance, including when sending notifications to opted-out customers.
- 5.112 We are not being prescriptive in terms of the exact language to be used in the notifications (see Section 4). Providers are, therefore, not required to use the same language or style as our example notifications. In particular, we do not consider it appropriate to mandate that providers include a reference to Ofcom in the notifications. However, they are free to do so if they wish, and we agree with Three that such a reference may provide useful context for some customers.<sup>72</sup> If providers choose to adopt their own approach to the notifications, they should be mindful of the need to comply both with our modifications to Condition C1 and their data protection obligations (including, in particular, the direct marketing rules).<sup>73</sup>

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<sup>70</sup> For example, see our example end-of-contract notification on page 74 of the December 2018 consultation which included the text: “*we’ve noticed you often go over your data allowance, so we have proposed a tariff with more data.*”

<sup>71</sup> For example, see our example SMS end-of-contract notification on page 74 of the December 2018 consultation.

<sup>72</sup> Participants in our 2019 best tariff research found the inclusion of the cheapest tariff available to any customer most useful in prompting them to consider their options (in particular considering whether the best deal for them was with another provider) when they were told that Ofcom required the inclusion of the tariff and why. Jigsaw, 20 March 2019: *Best tariff advice research 2019 - Executive Summary of Findings*

<sup>73</sup> The ICO has issued guidance on direct marketing: Information Commissioner’s Office: *Privacy and Electronic Communications Regulations – Direct marketing*. Available here: <https://ico.org.uk/media/1555/direct-marketing-guidance.pdf>. The ICO is also currently developing a new direct marketing Code of Practice. See: <https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/call-for-views-direct-marketing-code-of-practice/>

## 6. How the end-of-contract notification for residential customers should be sent

- 6.1 Article 105(3) requires that the information it relates to should be provided *“before the contract is automatically prolonged...in a prominent and timely manner and on a durable medium.”*
- 6.2 As noted in Section 4 the objectives of the EECC include ensuring consumers have transparent, accurate and timely information on switching and up-to-date information on offers and services which should increase their confidence in switching and make them more willing to engage actively in the competitive process.
- 6.3 In addition, Article 111 of the EECC addresses the need for end-users with disabilities to have access to electronic communications services equivalent to those enjoyed by the majority of end-users, and to benefit from the choice of providers and services available to the majority of end-users.
- 6.4 In this section we consider responses to our December 2018 consultation proposals on the timing, form and accessibility of end-of-contract notifications. We also set out our decisions that our modifications to Condition C1 will require providers to send end-of-contract notifications for residential customers:
- a) in a timely manner before the end of the end of their fixed commitment period;
  - b) as a standalone communication via a durable medium and in a prominent manner; and
  - c) in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format.
- 6.5 In addition, we set out our decisions on the associated guidance for these conditions that for notifications for residential customers:
- a) timely means sending a single notification between 10 and 40 days before the end of the fixed commitment period and that multiple notifications should be aggregated into a single message;
  - b) a prominent manner means that the date the fixed commitment period ends, the current monthly price and the price after the fixed commitment period should come first in the notification, and the provider’s best tariffs should come last; and
  - c) certain information needs to be included in notifications sent by SMS.
- 6.6 At the end of this section we consider how the end-of-contract notifications interact with BT’s voluntary commitments on landline-only customers.

## Timing and number of notices

### Our December proposals

- 6.7 We proposed to require providers to send a single end-of-contract notification, including best tariff advice, to customers in a timely manner, before the end of their fixed commitment period. We proposed guidance that for residential customers this would mean sending the notification between 10 and 40 days before the end of that period.
- 6.8 We said these proposals aimed to ensure customers can make informed choices and to change providers when it is in their best interest to do so.

### Consultation responses

- 6.9 Responses to our proposal were mixed. Whilst some respondents agreed with our proposals, others suggested alternative timings were more appropriate.
- 6.10 Decision Tech, Dixons Carphone, [X] and TalkTalk believed 10 days is too short for customers to act. CCP-ACOD highlighted vulnerable consumers may need more time than others to consider their options.
- 6.11 Citizens Advice thought 40 days was too far from the contract end-date for customers to take meaningful action. Both Citizens Advice and Decision Tech were concerned that providers might send notifications at a time when customers are less likely to switch and wanted a standardised approach across providers.
- 6.12 Vodafone and uSwitch noted the risk to customers of paying early termination charges if they act on a notification sent more than 30 days before the end of the contract. uSwitch suggested early termination charges should not be applicable from the moment an end-of-contract notification is sent.
- 6.13 BT wanted more flexibility to take into account clashes with other notifications (such as price changes).
- 6.14 Both Dixons Carphone and [X] also felt a single notification may not be enough to prompt customers to act and suggested additional notifications at separate intervals.

### Our decision

- 6.15 Having considered respondents comments on the timing and number of notifications, we have decided that the requirements we proposed in the consultation are appropriate. Our modifications to Condition C1 therefore require end-of-contract notifications to be sent in a timely manner before the end of the fixed commitment period and we only require a single notification.

- 6.16 Our guidance specifies that for residential customers the notification should be sent between 10 and 40 days before the end of the fixed commitment period (we refer to this as the “31-day window”).<sup>74</sup>
- 6.17 We have balanced a number of factors when setting our expectations on the timeframe in which providers should send notifications to ensure they are effective:
- a) ensuring the notification is not sent more than 40 days before the end of the fixed commitment period ensures the notification arrives at a time when any decision on how to proceed is relevant to the customer and therefore less likely to be deferred and forgotten;<sup>75</sup>
  - b) ensuring the notification is sent no closer than 10 days before the end of the fixed commitment period ensures customers have some time to consider their options and take action should they wish to; and
  - c) giving a window of 31 days during which the notification can be sent gives providers sufficient flexibility to stagger their customer’s communications and gives scope for multiple notifications to be aggregated (see paragraphs 6.23 – 6.29 below on aggregation).
- 6.18 We note the concern that allowing notifications to be sent between 30 and 40 days before the end of their fixed commitment period risks customers switching immediately and incurring early termination charges (because they need to take account of their relevant notice period, which in many cases is 30-days).<sup>76</sup> However, we note that there are requirements in place which mean that a customer contacting their provider to cancel or switch their service would be informed that an early termination charge would apply before they made their final decision. In addition, paragraphs 11 – 12 of our C1 Guidance<sup>77</sup> make clear that providers should allow customers to give more than the minimum period of notice. Therefore, customers could act immediately on a notification received between 30 and 40 days before the end of the fixed commitment period and arrange to cancel or switch services with effect from the end of that period without incurring charges (i.e. by giving additional notice).

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<sup>74</sup> This is subject to an exception in relation to aggregated notifications – see paragraphs 6.25-6.29

<sup>75</sup> Our 2018 end-of-contract notification qualitative research showed that participants ideally wanted to receive an end-of-contract notification a month or so before the end of the fixed commitment period as this was close enough that it seems relevant, but far enough in advance to allow time to have a think and/or look around. Jigsaw, July 2018. *End-of-contract notifications: Attitudes to and understanding of alternative content options*, slides 10,24. In addition, in our 2017 qualitative research also showed many participants wanted to receive a notification at least a month before the end of their contract. There was also a universal preference for the notification to be sent towards the end of their fixed commitment period, rather than at the end. Futuresight, April 2018. *Consumer Engagement with Communications Services*, page 51.

<sup>76</sup> In our December 2018 consultation we took into account that while 30-day notice periods may apply, the length of any notice period may vary by provider, service and/or whether the customer is switching. For example, for services switched within the Openreach network, the notice period tends to be aligned with the transfer period, i.e. minimum of 10 working days. For mobile contracts, some providers charge 30 days’ notice from the day the PAC is requested, some from the day the PAC is used (the day of the number port), and others do not charge for notice once a number port has taken place. From 1 July 2019 new mobile switching rules will ban all notice period charges after the switching date

<sup>77</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf)

- 6.19 We have also considered the concerns raised by respondents that 10 days may be insufficient time for some customers to act. The minimum time a customer would have to consider their options before the fixed commitment period expires needs to be balanced against the maximum time before the end of the fixed commitment period the customer should receive the notification to ensure it is relevant to them. As noted above we have balanced these two factors alongside giving providers a 31-day window to send the notification. The 10-day minimum period still gives the customer some time to consider their options whilst allowing, in combination with the 31-day window, the maximum time to be reasonably close to the end of the fixed commitment period.
- 6.20 In relation to the number of notifications that should be sent, we maintain that a single notification is the least burdensome way to provide important information to customers about the end of their fixed commitment period and best tariff advice. This does not preclude providers from sending additional notifications if they so choose, e.g. a second notification at the end of the fixed commitment period.

## Aggregation of notices

### Our December proposal

- 6.21 As part of our proposed guidance on sending notifications to residential customers in a “timely manner”, we also set out our expectations on the aggregation of notices. We said we expected providers to aggregate end-of-contract notifications into a single message where a customer is approaching the end of the fixed commitment period of more than one contract.

### Consultation responses

- 6.22 No respondents commented specifically on our aggregation proposals in relation to end of contract notifications.<sup>78</sup>

### Our decision

- 6.23 We have decided to maintain our guidance that end-of-contract notifications should be aggregated in certain circumstances. We consider it is important to help aid the customer’s understanding of which services are reaching the end of their fixed commitment period, the options available to them and the best tariffs available from their provider. For example, some customers buying triple-play services (landline, broadband and pay TV), may have small delays between the provisioning of their landline and broadband services and their pay TV services. It would benefit these customers to receive a single notification

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<sup>78</sup> Although some respondents made comments in relation to aggregating annual best tariff notifications. See Section 7, paragraphs 7.50 – 7.53.

advising of the end of the fixed commitment periods and best tariff advice for all of their triple-play services.

- 6.24 However, we have modified our guidance so that the requirement for notifications to be aggregated only applies where the relevant contracts are financially linked or interdependent.<sup>79</sup> In Section 4, we note that these contracts are the most relevant to a customer making an informed decision about whether to terminate a contract and change deals or providers. We also set out that linking contracts taken by the same customer (possibly across different systems) may create additional complexity and costs and this was another reason to limit the requirement to those contracts that are financially linked or interdependent to the primary contract. The same reasoning applies to the aggregation of notices. We have therefore amended our guidance to reflect this and ensure consistency between requirements.
- 6.25 Our guidance specifies that where a consumer is approaching the end of the fixed commitment period of more than one contract, we expect providers to aggregate the end-of-contract notifications into a single message if:
- a) the contracts subject to the notifications are financially linked or interdependent; and
  - b) the 31-day windows for those contracts overlap.<sup>80</sup>
- 6.26 The aggregated notification should then be sent within the earlier of the 31-day windows.
- 6.27 Providers may also choose to aggregate notifications (including aggregating an end-of-contract and annual best tariff notification) in other circumstances, subject to compliance with the General Conditions and our guidance.
- 6.28 We recognise that our guidance on timing could result in a customer receiving an aggregated notification more than 40 days (up to a maximum of 70 days) before the end of the fixed commitment period of one of the contracts to which the notification relates. In other circumstances, we would consider this to be too early for an end-of-contract notification to be sent, as there is a risk the customer might defer a decision and forget about the notification. However, in these circumstances we consider it more important that the customer receives an aggregated notification, so they can consider together all of the financially linked or interdependent services that are reaching the end of their fixed commitment period.
- 6.29 We also note that, where notifications are aggregated, the customer will still be no more than 40 days from the end of the fixed commitment period for one contract so any decision on how to proceed would still be relevant to the customer and the likelihood of the customer deferring a decision, or forgetting about the notification, would be less than would otherwise be the case. An alternative approach would be to require an aggregated notification to be sent within the period of overlap between the 31-day windows. However, we recognise that this could potentially result in a provider having only a one or

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<sup>79</sup> We explain at paragraph 4.68 and in the guidance in Annex A2 paragraph A2.14 what we mean by this term.

<sup>80</sup> We explain at paragraph 6.16 and in the guidance in Annex A2 paragraph A2.33 what we mean by this term.

two day period of overlap in which to send an aggregated notification. We therefore consider this alternative approach would be too restrictive for providers.

## Form of notice

### Our December proposals

- 6.30 Article 105(3) requires end-of-contract notifications to be provided in a prominent manner, and on a durable medium.
- 6.31 We considered there to be three elements to prominence:
- a) whether the notification needs to be sent as a standalone communication;
  - b) how the required content of a notification can be practically delivered when it is sent by SMS; and
  - c) whether the information in a notification should be ordered in a particular way.
- 6.32 We proposed that providers must send an end-of-contract notification via a durable medium (as currently defined in the General Conditions<sup>81</sup>) that is separate and distinct from any other communication, and otherwise in a prominent manner. Our proposed guidance specified that the date the fixed commitment period ends, the current monthly subscription price and the monthly subscription price that will come into effect after the fixed commitment period ends should come first in the notification. We said the provider's best tariffs should come last.
- 6.33 We also proposed guidance for notifications sent by SMS on what information must be included (including a message that further information is available, and where it is available).<sup>82</sup>
- 6.34 We did not propose to specify the method of communication by which the notification should be sent (whereas, we had specified this in the July 2018 Consultation).

### Consultation responses

- 6.35 Most respondents agreed with our proposals on the form of end-of-contract notifications.
- 6.36 Respondents [3] and Sky said providers should be given freedom to structure the notifications as they see fit and Sky noted the provider's best tariffs are most likely to trigger a response from the customer so should not be required to come last. Dixons Carphone argued that Ofcom should be prescriptive in the message and layout of the notification. Three said the availability of the auto switching process for mobile customers should get as much prominence in any notification as the best tariff information.

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<sup>81</sup> Durable Medium means paper or email, or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored.

<sup>82</sup> See para 7.47-7.40 of July 2018 consultation.

- 6.37 Sky also said that providers should be able to adopt a layered approach to providing information with core information in the notification and further details available in the customer's online account or by calling. It noted we had proposed this approach for SMS notifications and said we should allow this for all notifications regardless of how they are sent. It said presenting information, such as provider tariffs, online would ensure it is more up to date and easier to navigate through the use of links, expandable sections or pop-up boxes.
- 6.38 Three was concerned that SMS notifications containing a link to further information would undermine its efforts to educate customers on how to protect themselves from fraudulent communications by only using certain secure environments e.g. the provider's app. It was also concerned that the proposals could promote poor data protection practices under GDPR, as the end-user of the service may not be the subscriber.
- 6.39 Dixons Carphone said electronic versions of notifications should not have the option to "*click through to transact on the best offer suggestions*", as the customer may interpret the recommendations as the best offers they could receive and will likely take one of these offers rather than research the market.
- 6.40 Decision Tech suggested Ofcom may want to consider if the notification should come from a "*trusted authority such as Ofcom or Citizens Advice*", as customers may ignore the notification if sent from their provider.
- 6.41 A couple of respondents said Ofcom should reconsider the issue of specifying the method of communication. They said that for the notification to be effective it must be sent in a way which the customers would be most likely to pay attention to and that this was most likely to be its preferred method of communications. Decision Tech argued that customers that have opted out of paperless billing should still receive their notification via letter.

## Our decision

- 6.42 We have decided to adopt our proposals in relation to the form of the notice. Our modifications to Condition C1 require end-of-contract notifications to be sent via a durable medium and in a prominent manner. Notifications for residential customers will need to be separate and distinct communications. We set out our guidance below.

### Standalone communication

- 6.43 The notification for residential customers should be a standalone communication to ensure that the notification itself is sufficiently prominent. Sending the notification separate from bills, general marketing information or other service messages ensures customers do not mistake the end-of-contract notification with other messages or overlook it.<sup>83</sup>

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<sup>83</sup> Most respondents to our July 2017 Call for Inputs did not state whether an end-of-contract notification should be sent in a specific format, but MoneySavingExpert said that it should be a distinct communication and separate from any bills. This echoes the views of the majority of participants in our 2015 end-of-contract notification research who preferred the idea of a standalone communication from the provider to receiving the information with a bill. Ofcom, October 2015.

6.44 We have added a new paragraph to the guidance in relation to the requirement for notifications for residential customers to be “*separate and distinct from any other communication*”. It clarifies that this does not prevent providers from aggregating notifications in line with the guidance.

### Order of information

6.45 Our guidance specifies that providers should provide information in the end-of-contract notification to residential customers with the following given first:

- a) the date on which the fixed commitment period for that contract will end; and
- b) the current monthly subscription price paid by the subscriber and the monthly subscription price that will come into effect once the fixed commitment period ends.

6.46 The guidance specifies that provider’s best tariffs should come at the end of the notification for residential customers.<sup>84</sup>

6.47 Our requirements strike a balance between giving flexibility to providers to structure the notifications in a way that they think best and ensuring sufficient prominence for the important information that helps the customer understand the purpose of the notification.

6.48 Requiring certain information upfront in the notification makes residential customers aware of the purpose of the communication and highlights information essential to their decision-making. Evidence from our research suggested that participants considered it essential that the end-of-contract notification should lead with the date their fixed commitment period ends, as this sets the context for the rest of the communication. Participants also thought that it was ‘crucial’ to be told about any price change, as it would inform their decision on whether to engage.<sup>85</sup> Research also showed that an end-of-contract notification that led with an ‘offer’ may be discarded or overlooked because it would be perceived as marketing information.<sup>86</sup>

6.49 In relation to Three’s concerns about providers burying switching information we note that under our guidance this would come before the provider tariffs in the notification.

6.50 We do not think Sky’s suggestion that providers should be free in general to take a layered approach to providing information, with some of it outside the notification, is appropriate. Our requirements allow providers to send notifications via SMS because some customers prefer this method of communication,<sup>87</sup> as well as because this is a standard method that

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*End of Contract Notification - Presentation of Research Results.* Available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/74715/end-of-contract-notification-research.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/74715/end-of-contract-notification-research.pdf)

<sup>84</sup> Where a provider includes a list of services that form part of the contract and changes to those services in an annex to the notification (see para 4.33 in Section 4) this should come after the provider’s tariffs in the notification.

<sup>85</sup> Jigsaw, July 2018: *End-of-contract notifications: Attitudes to and understanding of alternative content options*, slides 15, 19, 42, 52-53.

<sup>86</sup> Jigsaw, July 2018: *End-of-contract notifications: Attitudes to and understanding of alternative content options*, slides 15, 25, 44.

<sup>87</sup> See paragraph 4.45 of the July 2018 consultation.

providers use to communicate with their customers.<sup>88</sup> In allowing notifications to be sent via SMS we have balanced the usefulness of this communication method, particularly given it may often receive more immediate attention from consumers compared to other methods of communication,<sup>89</sup> with the need to ensure that customers receive all the necessary information. In doing so we have carefully chosen the information that must be included in the SMS and accepted as a compromise that the remaining information must therefore be outside the notification.<sup>90</sup> However, it is possible to include all of the required detail in notifications sent by other means (e.g. letters or email), so we do not consider it appropriate to permit a layered approach to meeting our requirements in those circumstances. Providers would remain free to include a link to, or prompt to visit, the customer's online account in notifications sent by these means, provided that the requirements of our general conditions and guidance have been satisfied.

- 6.51 We also note Dixons Carphone's request that we preclude providers from linking through to offers from the notification. We consider that this may provide an important source of information that allows customers to find out more about the tariffs on offer. However, we have balanced this against other information we are requiring in the notification, such as the option of switching provider and details of the cheapest tariffs that may only be available to new customers. We therefore consider that there are sufficient prompts in the notification for a customer to research the market if they wish.

#### Equal prominence of provider tariffs

- 6.52 We have modified our guidance to specify that the provider's tariffs for residential customers should also be given equal prominence to one another.
- 6.53 Each tariff included in the notification provides the customer with different information to help them assess whether they are on the best tariff and, if not, to consider what the best tariff for them might be (as discussed in Section 5). As each tariff could be relevant to the customer's choice they should each be equally brought to their attention. Therefore, as part of best tariff advice, it is important that providers present the tariffs in the notification so as to give them equal prominence.
- 6.54 Our qualitative consumer research confirms the need for this change. Participants were more engaged with the tariff options when they were shown alongside each other (e.g. a tariff based on service alongside one based on usage) as it helped them make comparisons between the tariffs offered.<sup>91</sup>

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<sup>88</sup> We also noted in our December 2018 consultation that one of the benefits of giving providers flexibility in choosing the method of communication was that it would lower the cost of delivering notifications. See paragraph 7.44-7.46 of the December 2018 consultation.

<sup>89</sup> Jigsaw, July 2018. *End-of-contract notifications: Attitudes to and understanding of alternative content options*

<sup>90</sup> See paragraph 7.47-7.49 of the December 2018 consultation.

<sup>91</sup> Jigsaw, 20 March 2019. *Best tariff advice research 2019 - Executive Summary of Findings*.

## SMS notifications

- 6.55 The guidance for residential customers also sets out the information that must appear in an end-of-contract notification sent via SMS and that the remaining information should be made available elsewhere in a single location.<sup>92</sup> We have added to our guidance that the remaining information should be in a “single location” to provide clarity for providers. We consider that this was implicit in our proposed guidance and the December 2018 consultation which said the provider should provide *“the other details in either another durable medium (SMS, letter or email), or via a link in the SMS which should take the customer to their online account.”*<sup>93</sup>
- 6.56 In addition, we have amended our guidance on the message that must be included in the SMS. We had previously proposed that the message about further information should include a reference to the provider’s best tariffs. However, we recognise that this might result in a breach of direct marketing rules for opted-out customers. We have therefore amended our guidance so that the message about further information should instead include a reference to tariffs that the provider is required to tell the subscriber about. This is intended to encourage the customer to look at or “click through” to the other available information (as they may perceive it to be information that is being provided to them for their benefit), whilst taking account of the direct marketing rules. Our example SMS in Annex A3 shows how this message could be worded, although we are not mandating the use of this particular language.<sup>94</sup>
- 6.57 We acknowledge Three’s concerns regarding the inclusion of links in SMS notifications and the security of customer data. We would expect providers to take the necessary measures to protect customer data and welcome the promotion of good security practices. Providing additional information via a link is a simple, customer friendly way to ensure customers can readily access important information that cannot reasonably be included in an SMS because of its format. Providers should take measures they think necessary to mitigate any risks to customers from providing information in this way and this may include further security measures for a customer to log-on to their online account.
- 6.58 Further, we would only expect the account holder to receive a notification by SMS and not all end-users that may be part of a multi-SIM account.<sup>95</sup> If providers are unsure of the mobile phone number of the account holder then they should use a different method of communication to send the notification.

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<sup>92</sup> No respondents commented on the information we proposed should be included in the SMS message. Our 2018 qualitative research tested end-of-contract notifications using SMS with mobile customers. Participants agreed that text was better suited to shorter communications but some noted that the ‘basic version’ lacked information that was considered ‘essential’ e.g. price change information or notice periods. As such, participants suggested multiple texts may be a solution. See para 7.49 of the December 2018 consultation.

<sup>93</sup> See para. 7.48 of the December 2018 consultation.

<sup>94</sup> See paragraphs 5.110 to 5.112 for further discussion of the direct marketing rules and notifications being sent by SMS.

<sup>95</sup> Our modifications to Condition C1 require notifications to be sent to the subscriber that is a party to the relevant contract.

## Method of communication and mentions of Ofcom

- 6.59 We note the various comments regarding the method of communication but continue to be of the view set out in the December 2018 consultation that prescribing the method is unnecessary to ensure prominence. Customers will be used to receiving communications via many different channels and it is not clear that any single one will be more effective at ensuring a customer is appropriately informed.
- 6.60 We note the idea that a notification should come from a trusted authority such as Ofcom or Citizens Advice. There are, however, practical difficulties with this approach given that providers hold all the relevant information on customers and their contracts. We also note the results of Ofgem’s ‘Cheapest Market Offer letter’ trials, which found that supplier branded letters were more effective at prompting action (i.e. switching) compared to an Ofgem branded letter.<sup>96</sup> We therefore consider that a notification sent by the provider is the most appropriate approach. Providers are nevertheless free to note that the communication is part of a regulatory requirement by Ofcom.
- 6.61 As discussed in Section 5, the findings of our 2019 Qualitative research demonstrated the importance of making clear why certain tariffs are shown to customers. Participants found the information most useful in prompting them to consider their options (in particular considering whether the best deal for them was with another provider) when they were told that Ofcom required the inclusion of the tariff and why. For this reason, our guidance on the provider’s best tariffs specifies that providers should tell customers why the tariffs for which they are not eligible are presented to them in the notification. We note that this may include informing customers that Ofcom requires the inclusion of the tariff.<sup>97</sup>

## Accessibility

### Our proposals

- 6.62 We proposed to require providers to send end-of-contract notifications in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format. This was to align our proposal with Article 111 of the EECC, which addresses the need for end-users with disabilities to have access to electronic communications services equivalent to that enjoyed by the majority of end-users, and to benefit from the choice of providers and services available to the majority of end-users.

### Consultation responses

- 6.63 Most respondents agreed with our proposals. ACS stated that providers should follow up with the customer if a notification is requested in an accessible format. One respondent, [X], highlighted that customers with accessibility requirements, or that are in a vulnerable

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<sup>96</sup> Ofgem Behavioural Insights Unit, November 2017. *Cheapest Market Offers Letter trial* – Research Results. Available at: <https://www.ofgem.gov.uk/publications-and-updates/results-cheaper-market-offers-letter-trial>

<sup>97</sup> Jigsaw, March 2019. *Best tariff advice research 2019 - Executive Summary of Findings*.

situation, may not trust an SMS notification. It also said they may not understand what they need to do, particularly if they have nominated a third party to manage the account on their behalf, or do not have a mobile phone that is internet-enabled.

## Our decision

- 6.64 We have decided to maintain our December consultation proposals on this point. Our modifications to Condition C5.13 in Annex A1 require providers to send end-of-contract notifications in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format. This will ensure customers receive these notifications in a form that is most suitable for them. Providers should ensure they are fulfilling these format requirements for those customers which request them.
- 6.65 In regard to the particular concerns raised about vulnerable customers (who have not registered for an alternative format), we note that Condition C5 requires providers to have in place policies and procedures to ensure fair and appropriate treatment of vulnerable consumers. Providers should consider how they comply with these requirements when sending end-of-contract notifications.

## BT's voluntary commitments on standalone landline services

- 6.66 In February 2017, we set out our proposals to address the concerns we had identified in the standalone landline telephone services market.<sup>98</sup> We were concerned that voice only customers (those who only buy a telephone service but not broadband) and landline and broadband split purchase customers (who purchase these services separately) were getting poor value for money.
- 6.67 In October 2017 we set out the terms of a voluntary agreement with BT.<sup>99</sup> BT committed to providing the following over a three-year period in respect of voice only customers:
- a) a line rental price reduction of £7 per month (inclusive of VAT) effective from April 2018;
  - b) raising prices of calls and line rental by no more than inflation (CPI) each year;
  - c) provision of reporting information to allow Ofcom to monitor its compliance with the voluntary undertaking; and
  - d) a commitment to improve the information available to ensure voice-only customers are aware of possible savings available to them in this market.
- 6.68 Ofcom has been working with BT since 2018 to trial ways of providing information to voice-only customers to make them aware of possible savings available to them in this market.

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<sup>98</sup> Ofcom, 2017. *The review of the market for standalone landline telephone services: Provisional conclusions*. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/97806/Consultation-Review-of-the-market-for-standalone-landline-telephone-services.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/97806/Consultation-Review-of-the-market-for-standalone-landline-telephone-services.pdf)

<sup>99</sup> Ofcom, 2017. *Review of the market for standalone landline telephone service: Statement*. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/107322/standalone-landline-statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/107322/standalone-landline-statement.pdf)

Under the terms of the voluntary agreement, BT had agreed to incorporate any insights from their trials into their communications with the standalone voice segment.

6.69 As part of its response to this consultation, BT has now said that:

*“Our view is that end-of-contract and annual best tariff notifications seek to achieve broadly the same outcomes as the behavioural commitments accepted by Ofcom, and therefore to send both would be disproportionate and potentially confusing for customers. For consistency, we propose that end of contract notifications and annual best tariff statements are sent instead of the communications agreed as part of BT’s voluntary commitments.”*

*“We would, however, commit to using any insight delivered from the trials (and the subsequent survey) to best inform the end-of-contract notifications and annual best tariff advice to standalone voice customers in order to maximise engagement from this segment”.*

6.70 We agree that requiring BT to send separate information as part of its commitments for standalone voice customers in addition to the end of contract notifications and annual best tariff advice could cause confusion.

6.71 While we expect that both sets of obligations will continue to apply from 15 February 2020 until BT’s current voluntary commitment expires in 2021, we would be comfortable with BT meeting both sets of requirements through a single letter. We would expect that any insights gained from the randomised control trial and accompanying survey will be incorporated into BT’s subsequent end-of-contract notifications and annual best tariff advice for its standalone voice customers.

## 7. Annual best tariff notifications for residential customers

- 7.1 Article 105(3) of the EECC also requires providers to send end-users best tariff information at least annually. This requirement is part of the same provision as the requirement for best tariff advice to be included in an end-of-contract notification. It is intended to achieve the same objectives.
- 7.2 In particular, it aims to ensure consumers have transparent, up-to-date and comparable information on offers and services, which is key to their participation in competitive markets. It also aims to ensure that consumers are able to make informed choices and to change providers when it is in their best interest to do so. It reflects that providing consumers with transparent, accurate and timely information on switching should increase their confidence in switching and make them more willing to engage. The way the requirements are implemented should secure these objectives taking account of the complexity of the communications market.
- 7.3 In this section, we consider responses to our December 2018 proposals regarding annual best tariff notifications. We then set out our decisions on what the notifications for residential customers should include and how they should be sent.
- 7.4 The majority of respondents to our consultation provided comments regarding both end-of-contract and annual best tariff notifications together given the significant overlap of the requirements. We have carefully considered all those responses but, accordingly, this section only highlights those responses where a specific comment was made in relation to the annual best tariff notification requirements. Where we take the same approach as for their end-of-contract counterparts, we apply similar reasoning.
- 7.5 We have decided that annual best tariff notifications must be sent to all customers whose contracts are not subject to a fixed commitment period. These customers are already in a position to shop around for the best deal and therefore giving them these notifications will secure the objectives of Article 105(3).
- 7.6 For residential customers, the notification must include:
- a) the fact that the customer is not within a fixed commitment period for the contract;
  - b) any applicable notice period, or, for mobile contracts, that a notice period may apply;
  - c) the monthly subscription price;
  - d) details of the services currently provided under that contract;
  - e) details of other contracts taken with the same provider;
  - f) the dates on which the fixed commitment periods for those other contracts end;
  - g) the options available to the customer; and
  - h) the provider's best tariffs.

- 7.7 These notifications must be sent to residential customers:
- a) at least once in every 12-month period; and
  - b) in a prominent manner, on a durable medium, as a separate and distinct communication, and in an alternative format where customers have registered to receive bills in an alternative format.
- 7.8 We have also set out guidance on how providers should comply with these requirements.

## Content of annual best tariff notifications for residential customers

### Our December proposals

- 7.9 In our December 2018 consultation, we proposed that providers must inform customers of:
- a) the fact that the customer is not within a fixed commitment period for the contract;
  - b) any applicable notice period, or, for mobile contracts, that a notice period may apply;
  - c) the monthly subscription price;
  - d) details of the services currently provided under that contract;
  - e) details of other contracts taken with the same provider;
  - f) the date on which the fixed commitment period of other contracts taken with the same provider ends;
  - g) the options available to the customer; and
  - h) the provider's best tariffs.
- 7.10 We also proposed to adopt the same guidance on how providers should comply with our requirements on annual best tariff notifications as for end-of-contract notifications, which covered the following:
- a) details of services provided under the contract;
  - b) details of other contracts taken with the same provider;
  - c) the options available to the customer; and
  - d) the provider's best tariffs.

### Consultation responses

- 7.11 Respondents generally agreed with our proposals or reflected the comments they had made regarding our similar proposals for end-of-contract notifications. In particular, respondents repeated concerns regarding the inclusion of details of services provided under the contract, details of other contracts, options messages and the provider's best tariffs.

## Our decision

- 7.12 We have decided to maintain our proposals from the December 2018 consultation on the content required to be included in the annual best tariff notification and our modifications to Condition C1 reflect those requirements.<sup>100</sup>
- 7.13 There is a large degree of overlap between the content we are requiring in an annual best tariff notification and in an end-of-contract notification. In Sections 4 and 5 we addressed the substantive issues raised by respondents and made some changes to our guidance in light of some of the comments on the following:
- a) details of services provided under the contract;
  - b) details of other contracts taken with the same provider;
  - c) the options available to the customer; and
  - d) the provider's best tariffs.
- 7.14 These changes are also relevant to annual best tariff notifications. We will apply the same modified guidance on how providers should comply with these requirements to annual best tariff notifications as we will apply to end-of-contract notifications.
- 7.15 Below we set out the reasons for our decision to include each element of content in the annual best tariff notification.

### **The fact that the customer is not within a fixed commitment period for the contract**

- 7.16 To assess whether they are on the best tariff, residential customers need to know they are not subject to a fixed commitment period and can terminate their contract and sign up to a new deal. The modifications to Condition C1 therefore require providers to include a message stating that the customer is not within a fixed commitment period for the relevant contract. Providers need not say when it ended.

### **Any applicable notice period, or for mobile contracts, that a notice period may apply**

- 7.17 Subject to a small variation for mobile services, Condition C1 requires providers to state the applicable notice periods for the customer to terminate their contract. As for end-of-contract notifications (see Section 4), where the contract is for a mobile service the provider may instead include a message that a notice period may apply. This is because it may not be possible to give a specific notice period for mobile contracts.
- 7.18 Residential customers who receive annual best tariff notifications should be able to make choices about their contract and put them into practice effectively. To do that, they need information about any applicable notice period so they can plan their decision in a way that best suits their interests. For example, so they can avoid switching provider before the end of the notice period and having to pay for both old and new services at the same time.

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<sup>100</sup> We have made some amendments to the General Conditions on which we consulted in December 2018. These are explained in this section, Section 8 (in relation to business customers) and Section 11.

## The monthly subscription price

- 7.19 Requiring providers to remind customers of the current price they pay is important to assist them in assessing their options and making an informed decision about whether to remain on their existing deal. It is a key element of their ability to compare their existing price against new tariffs offered to them by the provider (or against another provider's tariffs) and to decide which is best.

## Details of the services provided under the contract

- 7.20 To make an informed choice about whether to remain on their existing deal or assess their other options, customers need to know what services they receive from their provider. A key aspect of this is knowing what services they receive under the contract for which they are outside their fixed commitment period, so they can understand the services for which they are free to switch deals or providers.
- 7.21 We have, nonetheless, decided to modify the position on this point slightly from that proposed in the December 2018 consultation. In particular, in Section 4 above we explain how we have changed our guidance about how providers should comply with the requirement to include the details of the services provided in end-of-contract notifications. This is to address respondents' comments regarding information overload and the need for clarity over which third party services need to be listed. The same reasoning applies to the requirement in the annual best tariff notification.
- 7.22 Specifically, we have amended the guidance so that the full list of services does not need to be provided in the notification itself. Although customers need to be able to easily and quickly access the full list of services provided to them under the relevant contract, we consider that setting these out in an annex to the main notification or online with a link in the notification would be sufficient.
- 7.23 Therefore, the guidance specifies that the details of the services provided under the contract should be in the form of a comprehensive list of all services which form part of the contract. This would include all ancillary services and any services supplied by a third party, if their provision to the customer forms part of that contract.
- 7.24 However, the full list of all services does not need to be listed in the notification itself, provided that:
- a) the subscriber's main services and the associated aspects of those services<sup>101</sup> are listed in the notification;
  - b) the full list of all services is provided in a single location;
  - c) that location is easily accessible to the subscriber; and
  - d) a reference to the location of that list is included in the notification.

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<sup>101</sup> We explain what we mean by this in paragraphs 4.46 – 4.49.

### Details of other contracts taken with the same provider and the dates the fixed commitment periods end for those contracts

- 7.25 Customers need information about other contracts for communication services with their provider in order to assess their best tariff options. This is particularly the case if there are contracts which are still within a fixed commitment period.
- 7.26 The relevant details would form part of a set of information enabling customers to assess whether they should stay on their current deal or move to a new one, without the risk of unintended consequences. They will draw to the customer's attention the potentially complex implications of terminating a contract when that contract is financially linked to, or interdependent with, another contract. Being informed of the wider consequences will increase the customer's confidence in making decisions that are in their best interests.
- 7.27 In addition, customers need to decide whether to buy separate or bundled services. To help make that choice, they need to know when the fixed commitment period for other contracts they have with the same provider will end. With this information, customers are better placed to assess whether they should sign up to a new deal for the service to which the annual best tariff notification relates or wait and bundle services when the fixed commitment periods under their other contracts end.
- 7.28 As to how providers should meet this requirement, we have again modified our proposed guidance on annual best tariff notifications in line with our end-of-contract guidance. Section 4 explains the changes we have made to our guidance for end-of-contract notifications in order to address respondents' requests for greater clarity and the complexity of implementing this requirement. The same concerns apply in relation to annual best tariff notifications.
- 7.29 We are therefore applying the same guidance on the requirement to include the details of other contracts taken with the same provider, and the date the fixed commitment period ends for them, for both types of notification. The guidance makes clear that only two categories of contracts need to be listed:
- a) if termination of the contract subject to the notification (the "primary contract") triggers an impact on another contract for communications services between the provider and the subscriber (the "secondary contract"), then the secondary contract must be listed; and
  - b) if termination of a secondary contract triggers an impact on the primary contract, then the secondary contract must be listed.
- 7.30 An impact from primary to secondary contract (or vice versa) could be a financial or another type of impact (e.g. the loss of a discount, automatic termination, changes to terms and conditions, change to services or allowances). We refer to these contracts as "financially linked or interdependent" in this document.

### Details of the options available

- 7.31 To identify the best tariffs available to them, and whether doing nothing and remaining on their existing tariff is the best option, customers need to know what options they have. Residential customers have a range of providers and services to choose from and may find those choices complex. There is also potential for providers to confuse customers and hinder their ability to make decisions that are in their best interests. It is therefore necessary for them to be given certain key pieces of information about their options.
- 7.32 We note in Section 4 that it would not be practical in the notification to give the customer a completely comprehensive list of available options. Our decision balances the need for full information with the potential risk of overloading customers with too much detail. It requires providers to outline their main options, so that customers are aware of, and can consider, them.
- 7.33 We are applying the same guidance in relation to the options available to the customer to both end-of-contract notifications and annual best tariff notifications. This includes that providers should give customers advice that they can:
- a) stay on their existing contract;
  - b) switch to a new contract with the same provider (including but not limited to those referred to as part of the provider's best tariffs);
  - c) switch to a new contract with a different provider; and
  - d) for subscribers on bundled handset and airtime mobile contracts only, switch to a SIM-only deal.
- 7.34 The advice should also inform subscribers that some providers may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other provider.

### The provider's best tariffs

- 7.35 Customers receiving annual best tariff notifications are in a similar position to those receiving end-of-contract notifications in relation to the choices they have to make. The complexity of choices they face means it can be difficult to identify specific tariffs which suit them. Part of best tariff advice, therefore, should be information which enables customers to understand what suitable tariffs are available. Having this, alongside the options messages, will enable customers to make detailed comparisons between the choices available and make an informed decision about whether to stay on their existing deal, sign up to a new one or switch provider. The information is necessary to give meaningful effect to the consumer protection objectives of Article 105(3).
- 7.36 In Section 5 we have explained the reasons for including each element of the provider's best tariffs and the changes we have made in light of respondent's comments. For the same reasons, the same guidance applies in relation to the provider's best tariffs for end-of-contract and annual best tariff notifications, subject to the following two exceptions.

- 7.37 First, as explained in Section 5,<sup>102</sup> we have amended our guidance to require the provider's best tariffs to be available as of the date of the notification. For end-of-contract notifications, they should also remain available at least until the end of the subscriber's fixed commitment period. This is not equally applicable to annual best tariff notifications, as the relevant contract will be outside any fixed commitment period.
- 7.38 Our guidance therefore states that for annual notifications, the provider's best tariffs should remain available for at least 30 days from the date of notification. We consider that 30 days is a reasonable period of time to enable customers to make detailed comparisons between the actual choices available to them. This time period takes into account that the requirements need to be implemented in a practical way so as to give customers useful and effective information but without unduly hindering providers' approach to pricing and short-term offers.
- 7.39 Second, we have set out in Section 5<sup>103</sup> the circumstances in which providers should include bundled tariffs in end-of-contract notifications. For the same reasons we set out there, we consider that providers should include bundled tariffs in annual best tariff notifications in the following circumstances:
- a) where multiple public electronic communications services are provided under the contract subject to the notification (e.g. a dual or triple play contract); and
  - b) where the provider supplies multiple public electronic communications services to the subscriber, but some are supplied under the contract subject to the notification and some under a financially linked or interdependent contract,<sup>104</sup> and the financially linked or interdependent contract is not subject to a fixed commitment period when the notification is sent.

## Timing and number of notices

### Our December proposals

- 7.40 We proposed that providers send annual best tariff notifications only to customers who are outside their fixed commitment period and within twelve months of the entry into force of the condition, or within twelve months of receiving an end-of-contract notification, and at least once per year after that point.

### Consultation responses

- 7.41 Most respondents agreed with our proposals on the timing of the annual best tariff notification. However, ACS and Dixons Carphone disagreed. ACS believed the annual best tariff notification should be sent between three and six months after the fixed

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<sup>102</sup> See paragraph 5.64.

<sup>103</sup> See paragraph 5.98.

<sup>104</sup> See paragraphs 7.30 for an explanation of this term.

commitment period end date. It said 12 months is too late for these customers to receive a notification.

- 7.42 Dixons Carphone said the annual best tariff notifications should be sent quarterly instead of at least once per year. It highlighted that customers may have to wait another twelve months if they miss the notification. One respondent, [X], also said providers should send more than one annual notification, as customers may miss or ignore a single one.

## Our decision

- 7.43 The EECC requires best tariff information to be sent at least annually and we remain of the view that the approach we proposed in the consultation is an effective way to implement that obligation.
- 7.44 However, we have decided to change our modifications to Condition C1 and the associated guidance from those we proposed in December. Our revised amendments make the requirements clearer for providers, which are that they will have to send an annual best tariff notification at least once in every 12-month period.
- 7.45 Our guidance sets out that, to meet the requirements of the Condition, a notification should be sent within the first 12 months of the life of a contract (or, if the contract already exists when the Condition comes into force, within 12 months of that date) unless the contract is subject to a fixed commitment period. In that latter case, the notification should be sent within 12 months of the provider sending an end-of-contract notification. In all cases, subsequent notifications should be sent within the 12 months following the previous one.<sup>105</sup>
- 7.46 We have considered the relevant consultation responses carefully but have decided not to specify as part of the guidance the specific point within the 12-month period that the annual best tariff notification should be sent. Whilst we note that ACS and Dixons Carphone said this information should be sent at an earlier point, the requirement gives providers flexibility to consider when best to send the information to their customers, taking into account other communications they may be sending. It allows them to batch the notifications or to align sending them with campaigns targeting the sub-set of customers who are no longer tied into a fixed commitment period. In our judgment, this flexibility is likely to benefit customers.
- 7.47 We note that providers may wish to send additional notifications and nothing in our requirement would prevent them from doing so. However, we do not believe it necessary to mandate more frequent notifications. The annual best tariff notification is intended to remind customers at certain intervals of the fact they are out-of-contract and inform them of their options. This should be balanced against the possibility that some customer may choose to be out-of-contract and the risk of sending notifications so frequently that they may be intrusive, or customers do not pay attention to them.

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<sup>105</sup> The guidance additionally clarifies when a notification should be sent in relation to contracts that have no fixed commitment period (and never have had). Our previous proposals did not make this point clear.

## Aggregation of notices

### Our December proposals

7.48 We proposed that, where a customer has two or more contracts with a provider that are outside of their fixed commitment periods at the time an annual best tariff notification is sent, the annual best tariff notification for those contracts should be combined into a single notification.

### Consultation responses

7.49 Most respondents agreed with our proposal to require providers to aggregate notifications. However, Virgin Media said that grouping such information should not be a mandatory obligation placed upon providers. It said providers should have the option to send notifications separately due to the complexity of pulling together the customer information required to determine whether the notifications should be combined. Tesco Mobile also noted that this proposal would require additional communication and data segmentation logic which could create additional costs it had not accounted for.

### Our decision

7.50 We continue to consider that, in general, customers should receive a single aggregated notification where they have more than one service outside a fixed commitment period with the same provider. They would receive, in one document, a reminder of their options as well as a stimulus to engage with the market and assess whether their choices are in their best interests, in line with the EECC's aims.

7.51 However, we note the concerns from some providers about the complexity of implementing this requirement. We also note that the complexity of linking contracts with the same customer (possibly across systems) has influenced other aspects of our decisions. In particular, it formed part of our reasoning for limiting the requirement to list the details of other contracts in the notification to those contracts that are financially linked or interdependent (see Section 4 paragraphs 4.68 – 4.72).

7.52 To address concerns about this complexity and to ensure consistency with other aspects of our guidance, we decided in Section 6 that providers only need to aggregate end-of-contract notifications where the contracts are financially linked or interdependent.<sup>106</sup> For similar reasons, we have decided that the same limitation should apply for aggregation of annual best tariff notifications. We have modified our guidance to reflect this.

7.53 This information will help give customers the confidence to consider other options in the market by making them aware of related contracts they need to consider as part of their decision-making process.

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<sup>106</sup> See paragraphs 7.30 for an explanation of this term.

## Form of notice and accessibility

### Our December proposals

- 7.54 We highlighted that Article 105(3) requires end-of-contract notifications, including best tariff advice, to be provided in a prominent manner, and on a durable medium. We proposed that the same should apply to the delivery and form of annual best tariff notifications. As for end-of-contract notifications, we also proposed that providers should send annual best tariff notifications as a separate and standalone communication (although subject to the requirement to aggregate notifications, as explained above).
- 7.55 Our proposed guidance was that providers should order the information in the annual best tariff notification with the following given first:
- a) the message that the fixed commitment period for a particular contract (or contracts) has ended; and
  - b) the current monthly subscription price under that contract (or contracts)
- 7.56 We proposed that the provider's best tariffs should come at the end of the notification.
- 7.57 For annual best tariff notifications sent by SMS, we also proposed guidance on what information should be included (including a message that further information is available, and where it is available).<sup>107</sup>
- 7.58 Finally, we proposed that, as for end-of-contract notifications, providers must send the notification in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format.

### Consultation responses

- 7.59 Most respondents agreed with our proposals on the form of the annual best tariff notification. Another respondent, [X], said annual best tariff notifications should also be included within the customer's billing information. There were no objections to our proposals on the ordering of information within the annual best tariff notification.

### Our decision

- 7.60 We have decided that the annual best tariff notification for residential customers should be sent in a prominent manner, on a durable medium and as a separate and distinct communication. This is reflected in our modifications to Condition C1 in Annex A1.
- 7.61 We have provided guidance in Annex A2 on how providers should comply with the requirement for prominence (this mirrors the guidance on prominence for end-of-contract notifications for residential customers). In particular:

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<sup>107</sup> See para 8.48 of July 2018 consultation.

- a) the fact that the customer is not within a fixed commitment period for the contract, and the current monthly subscription price paid, should come first in the notifications;
- b) provider's best tariffs should come at the end of the notification; and
- c) provider's tariffs should be given equal prominence to one another.

7.62 We also set out in the guidance our expectations about the information that must appear in the SMS message for an annual best tariff notification sent via that means, and that the remaining information should be made available elsewhere to the subscriber in a single location.<sup>108</sup>

7.63 Finally, the guidance also sets out the requirement for a separate and standalone communication does not prevent the provider from aggregating notifications in line with the guidance.

7.64 Both the end-of-contract and annual best tariff notifications serve similar purposes and should take similar forms to be useful and effective in achieving the objectives of the EECC. For the annual best tariff notification to be sufficiently prominent, it should be a standalone communication, sent to customers separately from their bill or other service message from their provider. This is to ensure the customer does not mistake, overlook or dismiss the notification and instead is more likely to use it to make informed choices about their services. It is also important that certain information is given to customers upfront, to make them aware of the purpose of the communication and to highlight points that are essential for them to engage in the competitive process.

7.65 In Section 6, we state that the requirement on providers to send notifications in accessible formats will ensure that customers receive these notifications in a form that is most suitable for them. Similarly, we are requiring providers to send annual best tariff notifications in a format such as electronic, braille or large print, where customers have registered to receive bills in an alternative format.

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<sup>108</sup> Similar to the equivalent guidance for end-of-contract notifications (see Section 6 paragraph 6.45), we have added to our guidance that the remaining information should be in a single location to provide clarity for providers. In addition, we have amended our guidance on the message that must be included in the SMS. The message about further information must now include a reference to tariffs that the provider is required to tell the subscriber about. See paragraphs 6.45 – 6.51 for an explanation of why we have adopted this revised approach.

## 8. End-of-contract notifications and annual best tariff information for business customers

- 8.1 As discussed in Section 3, we have decided to implement the objectives of the EECC for business customers by giving providers more flexibility in how they communicate end-of-contract and annual best tariff information to these customers.
- 8.2 In this section we set out the obligations we have decided to impose on business customers for end-of-contract notifications and annual best tariff information, and how we expect providers to implement these obligations.

### End-of-contract notifications

- 8.3 We have revised Condition C1 (see Annex A1) so that it effectively “copies out” the requirements of Article 105(3) on end-of-contract notifications for business customers.
- 8.4 This means that providers will be required to send their business customers an end-of-contract notification via a durable medium and in a prominent and timely manner before the end of the customer’s fixed commitment period. The notification will have to inform the customer of:
- a) the end of their fixed-commitment-period; and
  - b) how they may terminate the contract.
- 8.5 In addition, at the same time as providing this information, providers will also be required to give their business customers best tariff advice relating to their services. We have deliberately not sought to define “best tariff advice” for business customers in order to give providers maximum flexibility to determine what is appropriate for their business customers on a case by case basis.
- 8.6 These requirements are significantly less prescriptive than those proposed in our December 2018 consultation. Our more detailed guidance on our expectations for the information that should be included in the notifications, and how they are sent (Annex A2), now only applies to residential customers.
- 8.7 This means that providers have flexibility to decide how to communicate with their business customers in order to comply with these requirements. In particular, they do not necessarily need to send a separate, standalone, notification to business customers, as long as the required information is sufficiently prominent.
- 8.8 Although the information must be provided in a “timely manner” prior to the end of the fixed commitment period, we are not imposing any more detailed requirements in terms of timing, so providers will have greater flexibility to judge the appropriate time to contact the customer to discuss the end of their contractual commitment.
- 8.9 In light of this flexibility as to the form and timing of the notification, providers may also be able to use, or modify, their existing communications in order to provide the relevant

information, as long as the requirements for the information to be sent via a durable medium, and in a prominent and timely manner are met.

- 8.10 As set out in Section 2, the objectives of the EECC include ensuring that end-users have transparent, accurate and timely information on switching, which should increase their confidence and make them more willing to engage actively in the competitive process.
- 8.11 Providers should be mindful of these objectives when determining the best way to comply with the modifications to Condition C1 relating to business customers. They should ensure that their business customers are provided with relevant information, at an appropriate time and to a level of detail that is appropriate and necessary for them to make an informed choice, to identify the options available to them and to act accordingly.
- 8.12 Larger businesses with higher numbers of employees are more likely to use more specialised, higher capacity services such as dedicated internet access and leased lines.<sup>109</sup> Contracts used by larger businesses for more specialist services tend to be individually negotiated with each supplier.<sup>110</sup> Therefore, it is reasonable to assume that larger businesses are more likely to have a specialist responsible for the management of their communications services and are more likely to be better equipped to manage their communications contracts.
- 8.13 Some smaller businesses, however, behave in a similar way to residential customers and providers will need to take this into account. As set out in the December 2018 consultation, smaller businesses with fewer employees are much more likely than larger businesses to use ‘standard’ services such as PSTN phone lines and standard and superfast broadband. They may have contracts that are similar to those used by residential customers (and our research shows a significant proportion of smaller businesses actually use residential contracts for business use).
- 8.14 Where a business shares significant characteristics, behaviours, and needs with residential customers we would expect them to receive information as part of an end-of-contract notification that is broadly similar to that received by residential customers. Providers should consider ways to identify the varying needs of their business customers and ensure that, in complying with the new general conditions, businesses are appropriately informed and equipped with the information they need based on their circumstances.

## Annual best tariff information

- 8.15 Consistent with our approach on end-of-contract notifications, we have revised our draft general conditions so that they effectively “copy out” the requirements of Article 105(3) on annual best tariff information for business customers

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<sup>109</sup> Jigsaw, January 2017. *The SME experience of communications services: research report*, p.24. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/96348/Ofcom-SME-consumer-experience-research-2016-Report.pdf)

<sup>110</sup> Jigsaw, January 2017. *The SME experience of communications services: research report*, p.82.

- 8.16 This means that for business customers, the requirements specify that customers who are outside of any fixed commitment period should receive best tariff information at least annually (for relevant services). For the same reasons as explained above in relation to end-of-contract notifications, we have not sought to define what “best tariff information” consists of for a business customer.
- 8.17 Providers may use whatever means to communicate annual best tariff information to their business customers that they consider is appropriate to meet these requirements, and the objectives of the EECC. They do not necessarily need to send a separate notification which contains this annual best tariff advice, and as with end-of-contract notifications, they may be able to use, or modify, any existing communications with their business customers to inform customers of this information. The requirement for a notification to be sent via a durable medium and in a prominent manner does not apply to annual best tariff information for business customers.<sup>111</sup> It would therefore be open to providers to deliver the required information via their usual account management channels (e.g. meetings or telephone conversations with account managers), provided the objectives of the EECC are met.
- 8.18 This flexibility means that providers will be able to take account of the different types of contracts, and communications, they may have with business customers. As an example, a provider may have an overarching partnership agreement with a business customer but that customer may be out-of-contract for specific services they are receiving.<sup>112</sup> In this example a provider can consider what would be the most appropriate best tariff information to provide for that customer, for those services which are outside of the fixed commitment period, taking account of its existing communications with them.
- 8.19 Similar to end-of-contract notifications as above, providers should consider the needs of different types of business customer and provide them with relevant information and to an appropriate level of detail. Where a business shares significant characteristics, behaviours, and needs with residential customers we expect them to receive best tariff information similar to that received by residential customers.

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<sup>111</sup> The difference in approach between end-of-contract notifications and annual best tariff information derives from the EECC. Article 105(3) provides that the end-of-contract information should be provided via a durable medium and in a prominent manner, whereas it does not include the same requirement for annual best tariff information. We consider that a durable notification delivered in a prominent manner is necessary to deliver best tariff information to residential customers (see Section 6). However, we recognise that the diversity of business customers means that they do not all necessarily need a written communication in order to digest and understand best tariff information.

<sup>112</sup> [3<]

## 9. Implementation period and monitoring

- 9.1 In this section we consider responses to the proposals in our December 2018 consultation on the implementation period for end-of-contract notifications and annual best tariff information, and our approach to monitoring them.
- 9.2 We also set out our decisions on these points, which in summary are that:
- a) the implementation period should be extended to nine months, meaning the requirements will come into effect from 15 February 2020;
  - b) providers will be required to keep a record of each end-of-contract and annual best tariff notification they send to residential customers, and the date on which it was sent, for a period of at least 12 months; and
  - c) as part of our ongoing monitoring of the impact of our policy on consumers we will:
    - i) request additional data from providers as they roll-out their notifications;
    - ii) conduct ongoing consumer research; and
    - iii) continue to consider the need and potential to conduct a randomised control trial.

### Implementation Period

#### Our December proposals

- 9.3 The requirements of the EEC must be implemented into national law by 21 December 2020. We said in our December 2018 consultation that we do not see any reason to deprive UK consumers of the benefits of the protections provided by Article 105(3) of the EEC until that time, and that an earlier implementation will also avoid providers potentially incurring wasted costs from implementing two sets of requirements.
- 9.4 We said that most providers would already have systems and processes in place that allowed them to communicate service and marketing messages to their customers on a regular basis. We considered that a six-month implementation period was sufficient for providers to make any necessary systems and process changes required to deliver the end-of-contract and annual best tariff notifications. We also highlighted that, following the implementation period, the sending of end-of-contract notifications would naturally be staggered over time by customer's contract end dates, and providers would have 12 months to send annual best tariff notifications. Therefore, we proposed to give providers six months to implement the requirements to send both end-of-contract notifications and annual best tariff notifications.

#### Consultation responses

- 9.5 Some providers said the proposed six-month implementation period was not long enough for providers to prepare and test the necessary system changes to meet the requirements. Most providers suggested between nine and twelve months was a more appropriate

period, although Sky suggested fifteen months would be required. Three said the six-month timescale would be achievable without the provider's best tariffs proposals and suggested that these were implemented separately.<sup>113</sup>

- 9.6 BT and [X] said that six months would be particularly difficult in relation to business customers and additional testing would be required to prevent errors given the complexity of identifying the 'best tariff' for customers. BT suggested implementation of the requirements for business customers should be extended to December 2020.
- 9.7 Other respondents said that Ofcom should prolong business implementation indefinitely until further discussions were had on the impacts of the EECC between Ofcom, DCMS and stakeholders. They said that whilst Ofcom was aiming to prevent any delay in implementation to bring the benefits of the regulation to residential customers as soon as possible, we had failed to set out what the benefits will be for business customers. Gamma also said Ofcom should wait until after Brexit before taking a view on the implementation period for business customers as current uncertainty could affect adoption of the EECC.
- 9.8 A number of respondents said the proposed six-month period was reasonable and should be achievable by providers. One respondent, [X], said this timescale was achievable depending on scope of best tariff information. ACS also agree with the timescales, although said it was unclear whether providers would be able to implement the proposals effectively within the six-month period.
- 9.9 Citizens Advice said providers should be required to implement earlier and proposed reducing the implementation period to three months. It was concerned that customers would continue to overpay until the proposals came into effect. Dixons Carphone also said the annual best tariff notification should be implemented earlier than proposed, so that consumers could benefit from annual best tariff notification provisions sooner. It highlighted that current out-of-contract customers could be waiting much longer than 12 months before they were notified.

## Our decision

- 9.10 Having considered consultation responses, we have decided to extend the implementation period for end-of-contract notifications and annual best tariff information to nine months for both residential and business customers.
- 9.11 This means our modifications to Conditions C1 and C5 (see Annex A1), and our additional guidance on C1, will come into force on 15 February 2020 (see Annex A2).
- 9.12 In taking this decision, we have taken account of consultation responses on the changes needed to implement requirements, in particular the best tariff advice which was not part of our previous July 2018 consultation proposals. We recognise that the best tariff requirements will require providers to invest in systems development and make changes to existing processes, particularly in relation to providing personalised tariffs based on

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<sup>113</sup> In a follow-up submission, Three indicated that [X].

customers' usage. We therefore think it appropriate to extend the implementation period to ensure providers have the time to make the necessary changes and ensure they are implemented effectively with appropriate testing.

- 9.13 Some respondents suggested that they needed longer than nine months to implement the requirements. In deciding on a nine-month implementation period we have taken into account that in several instances we have amended our requirements from those proposed in December 2018 to reduce the complexity for providers. In particular, we have amended our approach to the requirement to give details of the services under the contract and other contracts that customers have with the same provider which several respondents indicated would add additional complexity to billing system changes. In view of these changes, we consider that a nine-month period is appropriate, and we note that several respondents indicated that this was achievable.
- 9.14 As set out in Section 8 we have significantly amended our approach to implementing our requirements for business customers. Providers will now have much greater flexibility in relation to business customers. In particular, providers will not necessarily need to send a separate, stand-alone, notification to business customers and could use, or modify, their existing communications with them to meet the requirements. We are also not defining what "best tariff information" means for business customers, in order to allow providers flexibility to implement the requirements in a way that is most suitable for their business customers. In light of these changes, we consider that a nine-month period should be sufficient for providers to implement the requirements for business customers.
- 9.15 In addition, we consider that implementing the requirements of the EECC early is appropriate for business customers as it ensures they receive the benefits of our requirements at the same time as residential customers. This is particularly the case for smaller businesses which, as set out in Section 8, can often have similar characteristics to residential customers. We recognise the uncertainty created by the Brexit process, and the potential implications of a "no deal" scenario on our obligations to implement EU legislation. However, we do not consider it appropriate to address this uncertainty by waiting until after Brexit. We are proceeding on the basis that the UK is currently a Member State and that our obligation to implement the EECC is likely to remain in the event a Withdrawal Agreement is concluded with the EU.<sup>114</sup>
- 9.16 We note that some respondents argued for a shorter implementation period for both end-of-contract and annual best tariff notifications so that customers can benefit sooner. We agree that customers should receive the benefits from these notifications as soon as possible. However, we need to balance this with the need to ensure that providers are given sufficient time to implement the requirements effectively and make the necessary system changes. In particular, implementing earlier could create a risk that providers do not have sufficient time to update their billing systems, leading to errors which would create a poor customer experience. We consider a nine-month implementation period is a reasonable balance between the need to give time for providers to implement the

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<sup>114</sup> Assuming that a post-exit implementation period lasts until at least the end of 2020. See also paragraph 2.11.

requirements and giving customers the benefits and protections of Article 105(3) as soon as possible.

## Monitoring

### Our December proposals

9.17 In December we noted that it is best practice to monitor and evaluate the effectiveness of consumer facing remedies. This would ensure that requirements and guidance imposed on providers are met and customers receive meaningful notifications which enable them to make informed choices. We also said we intended to test that our intervention would not give rise to unduly adverse or unintended consequences.

### Consultation responses

- 9.18 Respondents sought further clarity on what specific information Ofcom would collect from providers, and made several suggestions on how Ofcom should approach monitoring:
- a) BT suggested that it should be sufficient to retain the date on which a customer's last notification was sent, and the offers made within that notification;
  - b) Dixons Carphone and Citizens Advice recommended Ofcom collect data on the types of tariffs offered by providers, as part of monitoring of the 'provider's best tariffs'. Both respondents also suggested Ofcom strengthen its proposals by requiring providers to record additional information on the impact of notifications, such as: the length of time the customer stayed on the same contract after the notification; whether they switched to a new deal with the same provider or a different provider; and, which customers on combined airtime and handset deals continue to pay the full price after the end of the minimum contractual period;
  - c) Dixons Carphone also believed Ofcom should collect information on customer engagement and publish findings in a regular report; and
  - d) the Consumer Council believed it may be useful for Ofcom to gather research on a regional basis regarding the impact of notifications and the likelihood for consumers to engage with providers and deals in different areas of the UK. They offered to help deliver this.
- 9.19 O2 and Tesco Mobile said clarity on our monitoring proposals was needed so it could be factored into their cost analysis and systems development. O2 said further details on the data Ofcom planned to request from providers would allow it to amend its system architecture as required.
- 9.20 Vodafone said it was disproportionate to keep a record of the notifications for at least 12 months suggesting six months was more appropriate. It also said the requirement to store this information should fall away when a customer switches to a different provider.

- 9.21 Both Dixons Carphone and Citizens Advice said Ofcom should consider testing notifications with consumers to identify ‘the most impactful messaging and timing’, including whether sending two notifications was more effective.
- 9.22 Citizens Advice also suggested Ofcom should strengthen its proposals relating to Randomised Control Trials (RCTs) by mandating providers comply with the most effective notification content and format. Which? agreed with Ofcom running RCTs but said if providers would not do this voluntarily, then Ofcom should seek an alternative approach.

## Our decision

- 9.23 As discussed in Section 4, Article 105(3) seeks to ensure consumers are able to make informed choices and to change providers when it is in their best interest to do so. It aims to ensure consumers have transparent, accurate and timely information on switching to increase their confidence and make them more willing to engage actively in the competitive process. We intend to monitor and evaluate whether the approach providers take to implementing end-of-contract notifications and annual best tariff information, and our guidance, is effective in achieving these objectives.
- 9.24 Specifically, we intend to monitor the impact of our policy on consumer awareness, engagement, satisfaction, spend and confidence in navigating the market. We agree with Dixons Carphone and Citizens Advice that it would be appropriate to test how outcomes may vary according to the characteristics of the notifications. As discussed in Section 3, we also intend to consider the impact our requirements may have on providers’ contracting practices. For example, whether our policy would give an incentive to providers to alter their approach to out-of-contract pricing.
- 9.25 In order to carry out this monitoring we have decided to:
- a) require providers to keep a record of each end-of-contract and annual best tariff notification they send to residential customers, and the date on which it was sent, for a period of at least 12 months. Our modifications to Condition C1 (Annex A1) reflect this requirement;
  - b) request additional data from providers (using our statutory information gathering powers) as they roll-out their end-of-contract notifications and annual best information, to assess the impact of our policy on their customers;
  - c) conduct on-going consumer research by focusing on engagement and satisfaction, where possible linked to the receipt of end-of-contract and annual best tariff notifications; and
  - d) keep under review the need and potential to conduct a randomised control trial to assess the effectiveness of different formats of notifications.
- 9.26 We will not require providers to keep records of any particular information in relation to business customers. In Sections 3 and 8 we recognise that businesses are generally more informed and more actively engaged with providers. As such, we have decided that the objectives of the EECC can be achieved without specifying the detailed content of end-of-

contract notifications to be sent to business customers. We also do not require providers to send a separate annual best tariff notification to business customers. Accordingly, we do not consider it necessary to impose the same monitoring requirements for business customers.<sup>115</sup>

9.27 Below we respond to comments received in response to our December 2018 consultation and set out our approach to the specific aspects of our planned monitoring work.

#### **Requirement to keep a record of notifications sent for residential customers**

9.28 We disagree with Vodafone that it is disproportionate to require providers to keep records of the notifications for 12 months, and that the requirement to store data should fall away when customers switch. The 12-month retention period allows us to collect information on an annual basis. We consider this more efficient than collecting this data on a more frequent basis, as would be required under Vodafone's suggestion.

9.29 We do not anticipate that the requirement to hold records for 12 months would have a material impact on providers, as they are already able to store personalised information on their customers. We also note that this period is consistent with the existing obligations in General Condition C3.3 which require providers to retain relevant billing records for a period of 12 months. Therefore, providers are likely to already have relevant processes in place for keeping records for this period of time.

9.30 We agree with Dixons Carphone and Citizens Advice that it would be relevant to collect information on the types of tariffs offered in the notifications. This, in combination with some of the provider data discussed below, will allow us to assess the extent to which effectiveness of our policy may vary depending on how providers have complied with our requirements regarding their best tariffs.

9.31 We also intend to assess how the impact of our policy on consumers may vary according to other characteristics of the notification - including the length of the message and the order in which the information in the message is presented. Given these objectives, and the broader need to ensure providers are complying with the requirements on the content and form of the notifications, we disagree with BT that it would be sufficient for providers to retain only the date on which a customer's last notification was sent, and the offers made within that notification.

9.32 We have therefore maintained our modifications to Condition C1 requiring providers to hold a record of each end-of-contract and annual best tariff notification they send to residential customers, and the date on which it was sent, for a period of 12 months.

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<sup>115</sup> We explain in Section 8 that where a business shares significant characteristics, behaviours, and needs with residential customers, we would expect them to receive information as part of an end-of-contract notification that is broadly similar to that received by residential customers. Accordingly, we consider that monitoring the notifications and outcomes of our policy for residential customers will also be informative in assessing effectiveness of our remedy for these small businesses.

### Requesting additional data from providers

- 9.33 We consider it is important to collect provider information on customer engagement and outcomes to assess the effectiveness of their approach to implement the notifications. This could include information on the action taken by customers towards the end of their fixed commitment period, as well as the price they pay and services they receive before and after the fixed commitment period ends.
- 9.34 In doing so, we intend to assess how the effectiveness of notifications may vary according to customers' demographic characteristics, such as age, postcode and customer tenure. We intend to collect information at the customer level, which would allow us to assess the impact on a regional basis as suggested by the Consumer Council.
- 9.35 We also intend to collect information on the impact of our intervention on providers' contracting practices. This would include information around the terms of the contract, as well as price and service changes which occur as a customer reaches the end of their fixed commitment period.
- 9.36 Our experience suggests that providers hold information on the areas discussed above (i.e. customer outcomes, customer characteristics and contracting practices) as part of their regular course of business. Therefore, we consider that we will be able to request this information using our statutory information gathering powers (as part of our ongoing monitoring work) and we consider it unnecessary to impose a specific requirement on providers to collect this data.

### Consumer research

- 9.37 As outlined in our December 2018 consultation, we intend to complement our analysis of provider data with consumer research. This includes evidence of consumer awareness of, for example, their contract status and data use. We would also consider collecting information on consumer engagement, confidence and satisfaction, and how this is promoted through our end-of-contract and annual best tariff notifications. This will be gathered using a combination of existing and bespoke research and will allow us to disaggregate the results on a regional basis.

### Randomised control trials (RCTs)

- 9.38 We agree with Citizens Advice that RCTs could help inform whether a particular approach to the content and format of the notifications is most effective in achieving the objectives of the EECC. We continue to welcome working with any interested providers to test different versions of the notifications on consumer knowledge and behaviour as part of our monitoring work.
- 9.39 At this stage, we consider that the monitoring work we have outlined above will help us to determine whether particular approaches to implementing our requirements are more effective than others and lead to a significant improvement in consumer outcomes. If this work does identify advantages to a particular approach, we will consider at that point

whether there is merit in exploring further options for carrying out RCTs as part of our evaluation of these different approaches.

## 10. Regulatory impact assessment

- 10.1 In this section, we set out the impacts on providers and end-users<sup>116</sup> of implementing the end-of-contract notifications and annual best tariff information requirements described in Sections 4 to 9.
- 10.2 In summary, our assessment is that:
- a) our decisions seek to ensure end-users are able to make informed choices and to change providers when it is in their best interest to do so. We consider that this will in turn bring substantial benefits to them; and
  - b) we recognise that our decisions will cause providers to incur implementation and ongoing costs. That said, we consider that the revisions and clarifications we have made address the main concerns raised in response to our December 2018 consultation in terms of the costs and complexity to providers of implementing our requirements.

### Scope of this impact assessment

#### Our December proposals

- 10.3 In our December 2018 consultation, the regulatory impact assessment set out our consideration of the costs and benefits of our proposals and the overall impact on providers and end-users.

#### Consultation responses

- 10.4 We received a number of comments from respondents on the nature of our impact assessment in the December 2018 consultation. Some respondents were concerned that our impact assessment was only qualitative, particularly in relation to business customers. They also said that we had underestimated the likely costs of our proposals.

#### Our decision

- 10.5 In December, we consulted on amended proposals to implement the relevant parts of Article 105(3) of the EECC ahead of its transposition deadline.<sup>117</sup> In reaching our decisions set out in Sections 4 to 9, we have sought to give effect to the EECC's objective of ensuring a fully harmonised, high-level of protection for end-users.
- 10.6 In particular, end-of-contract notifications and annual best tariff information will ensure the availability of transparent, up-to-date and comparable information on the services customers buy. This information will allow these customers to make informed choices and

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<sup>116</sup> End-users in this context refers to the residential and businesses customers that will receive the notifications and information we propose in this consultation.

<sup>117</sup> We proposed that the draft General Conditions would take effect six months after our final statement – see Section 9 - which would be approximately 13 months before the transposition deadline.

to change providers when it is in their best interest to do so. This should, in turn, lead providers to compete keenly.

- 10.7 Given our earlier work on these issues, we have decided to implement the relevant parts of Article 105(3) as soon as possible.
- 10.8 We have assessed the impact of our decisions in a manner that we consider to be appropriate in light of this context. While we have not quantified aspects of our decisions, we have assessed whether specific elements impose significant costs on providers without being necessary to achieve the objectives of the EECC.
- 10.9 In this statement we have amended our policy from our December proposals, particularly in relation to business customers, where costs to providers could be reduced while still giving effect to the objectives of the EECC.

## Impact on end-users

### Our December proposals

- 10.10 In our December 2018 consultation, we said that our proposals would generate the same type of benefits as those set out in our July 2018 consultation. That said, we acknowledged that our proposals were broader than those in the July 2018 consultation. In particular, we said our policy would now also generate a benefit to all business customers, and all end-users would derive an incremental benefit from the requirement to provide best tariff advice.
- 10.11 We considered that there were three distinct impacts of end-of-contract notifications which would serve to benefit end-users – the provision of information which some end-users are lacking, a reduction in time and effort for end-users who currently seek out this information, and assisting the competitive process. We also recognised that end-of-contract notifications may affect providers' pricing decisions, which in turn could offset some of the benefits we identified.
- 10.12 We considered that annual best tariff information would have the same three types of impact as we had identified for end-of-contract notifications. We also identified two categories of end-users who would benefit from annual best tariff information. First, we said there would be a one-off benefit to those end-users who are currently out-of-contract and would not have received an end-of-contract notification in the past. Second, we said there would be the ongoing benefit of reminding end-users who have gone out-of-contract that they have done so, even after they have received an end-of-contract notification. We also noted the potential offsetting effect as a result of provider's pricing decisions, as we had for end-of-contract notifications.

## Consultation responses

- 10.13 Some respondents agreed with the impact of our policy on customers. However, others commented on aspects of our proposed message which could impact the effectiveness of achieving these objectives.
- 10.14 Moreover, many respondents argued that benefits to (particularly large) business customers would be much more limited. They argued that business customers are more engaged and able to renew and renegotiate their contracts, and therefore these customers are less likely to suffer harm. Certain respondents (Vodafone, Virgin Media, Gamma) also argued that (particularly larger) businesses tend to have account managers and so would be aware of when their contracts come to an end. They concluded that this would make end-of-contract notifications irrelevant for these customers.
- 10.15 Some respondents commented that our proposed approach to the provider's best tariffs would result in supply side responses which would off-set some of the benefits we identified to residential customers. In particular:
- a) BT stated that the addition of the cheapest tariff to any customer would result in existing customers calling-up to command lower prices, such that acquisition offers would become less attractive to providers. This would in turn lead to a levelling out of prices, which BT said would likely dampen competition for new customers and reduce the incentive to switch;
  - b) BT also said that the inclusion of prices offered through affiliates as part of the provider's best tariffs would jeopardise competition on these platforms. It argued that providers would consider withdrawing offers from affiliates if they would have to make these tariffs available more widely. Sky made a similar argument in relation to the large tail of covert offers, closed user group offers, and very short term offers that may be available from time to time;
  - c) BT further argued that providers must be free to react to market dynamics over time, and customers must be free to negotiate a better deal. As such, it said it would be a perverse outcome if, having quoted a best tariff offer to a customer, providers could not then choose to go lower if a customer subsequently rang to negotiate;
  - d) Sky argued that it would be impossible to map its current high frequency of tariff change into a highly personalised and durable notification format. It considered that requiring providers to do so would likely drive a much-simplified offer strategy that will negatively impact customer choice. One respondent, [X], also argued that there are significant technical complications involved in drawing in a constantly changing cheapest tariff; and
  - e) BT said that the provider's best tariffs could be restrictive if offers included in the notifications have to match the cheapest available to any customer. It said that it would be almost impossible to ensure that the best tariff included in a notification could be verified as being the cheapest at that point in time, and that it would not be in

consumers' interest if cheaper short term offers could not be made for fear of creating a mis-match with tariffs in recent notifications.

## Our decision

- 10.16 We have addressed responses relating to the effectiveness and design of the policy we proposed in our December 2018 consultation in Sections 4 to 8. We remain of the view that these requirements will be effective in bringing substantial benefits to end-users in the following ways:
- a) they will provide information which some end-users are lacking when they reach the end of, or are already outside, their fixed commitment period. They will allow some of these end-users to avoid going out-of-contract, or to re-contract, which in turn could benefit them in terms of lower prices and/or a service better suited to their needs;<sup>118</sup>
  - b) they can reduce the time and effort end-users require to remember or search for information relevant to their decision on whether and how to act at the end of, or when they are already outside, their fixed commitment period; and
  - c) they could assist the competitive process by enhancing the ability of end-users to make informed decisions and penalise providers for not offering sufficiently attractive deals. This would consequently put downward pressure on prices, and upward pressure on service and quality, to the benefit of end-users. For annual best tariff information in particular, we believe that regularly providing out-of-contract customers with best tariff information will limit the ability for providers to significantly raise prices to these customers.
- 10.17 We consider that annual best tariff information will also be beneficial to those end-users who have already received an end-of-contract notification. For example:
- a) they may originally have derived some benefit from going beyond their fixed commitment period, e.g. because they valued the flexibility. The annual best tariff information will be useful as these end-users re-assess whether since then it has become more beneficial for them to re-contract with their current provider, or switch to another provider (e.g. if there are improved deals in the market); and
  - b) they may not have been in a position to act in response to receiving an end-of-contract notification or forgot about it. The annual best tariff information will ensure these end-

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<sup>118</sup> In Annex 6 of our July 2018 consultation we concluded that only a relatively limited number of residential customers would have to avoid being out-of-contract to ensure that the benefits of our proposals would exceed the costs. In our assessment we used the difference between the average spend of in-contract and out-of-contract residential customers as a proxy for the benefit that could be achieved. We noted that this difference should be interpreted carefully, as it may under or overstate the extent to which customers pay higher prices after the end of their fixed commitment period. However, we found it remained relevant given that we observed such differences as part of the tariffs available at the time. We also recognised that a consumer who chooses to re-contract may incur some search costs, reducing the net benefit that could be achieved. We therefore tested the sensitivity of our analysis to reducing the benefit to half that of the difference in average spend of in-contract and out-of-contract residential customers.

users are reminded of information relevant to them when considering their options and whether they should act.

- 10.18 We also remain of the view that the inclusion of best tariff advice in end-of-contract notifications and the provision of annual best tariff information will further facilitate informed choice to the benefit of end-users. For residential customers, a service-based best tariff and, where appropriate, a usage-based best tariff will help them to consider what type of tariffs will best reflect their needs. Additionally, to the extent that providers include an upgrade tariff in addition to the provider's other best tariffs, this information can increase consumer awareness of other choices available to them. For business customers, we recognise that they will typically have more complex and bespoke tariff options, so providers are best placed to understand what types of tariff offerings would be informative to these customers in deciding whether to re-contract or switch.
- 10.19 As set out in Section 8, we have significantly reduced the prescriptiveness of our requirements as they relate to business customers. Given the more bespoke and negotiated relationships between providers and their (particularly larger) business customers, our revised approach to business customers (see Section 8) offers providers greater flexibility to provide information in the most effective format for each particular business. This added flexibility should in turn avoid providers incurring undue implementation costs whilst still achieving the objectives of Article 105(3) EEC.
- 10.20 As in our December 2018 consultation, we recognise that end-of-contract notifications and annual best tariff information may affect providers' pricing decisions, and this could result in a negative impact on (some) end-users. Currently, providers may be willing to offer lower in-contract prices to attract customers which can earn them higher out-of-contract prices at some point in the future. In this case, limiting the number of customers who go, or remain, out-of-contract as a result of our policy may in turn reduce the incentive for providers to offer low in-contract prices, offsetting some of the benefits we identify above. Moreover, there may be some incentive for providers to raise out-of-contract prices, for example, if consumers who continue to go out-of-contract following the receipt of an end-of-contract notification or annual best tariff information are on average less price sensitive.
- 10.21 While we do not have evidence to determine whether providers would have an incentive to raise prices in this way following our decisions, there are several factors which suggest that there would be a net benefit to end-users even if they did:
- a) an increase of the in-contract price is not likely to offset in full the reduction in the price paid by those who avoid being out-of-contract;<sup>119</sup>

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<sup>119</sup> The relevant question is whether all of the loss in profit from a reduction in the number of customers going, or remaining, out-of-contract would be passed on to customers in the form of increases in the in-contract prices. The extent of this offsetting effect depends, amongst other things, on the nature of competition between providers. Even in markets with active competition, the level in which a loss in profit is passed on may not be complete (i.e. below 100%). This view is consistent with other situations where we have considered potential offsetting effects, such as mobile termination and non-geographic calls (including tiered termination rates).

- b) the reduction in time and effort for those who currently seek information that will be provided as part of our requirements would offset any increase of the in-contract or out-of-contract price, at least partially; and
  - c) competition benefits, such as those set out above, would offset any incentive to increase in-contract and out-of-contract prices, at least partially.
- 10.22 Finally, we have considered respondents comments on the potential for the provider's best tariffs to result in a simplified offer strategy impacting choice for residential customers, as well as the potential for it to result in a dampening of competition.
- 10.23 We recognise respondents observations that providers can offer a wide range of full price and discounted tariffs, which can vary according to the brand they operate and the channel through which they sell. Moreover, we recognise that providers may run temporary promotions and targeted discounts in a way that can benefit customers through increased choice, and which can add to the competitive dynamic in the industry. As such, we would want to avoid beneficial offers being withdrawn if they are too complex to maintain within the context of our decision. Similarly, we would not want to preclude pro-competitive offers (including for new customers) from being targeted, and/or if providers could not respond to dynamic offers made by rivals following the notifications they have sent.
- 10.24 That said, we do not consider that such unintended effects would necessarily arise as a result of end-of-contract and annual best tariff notifications for residential customers:
- a) We are not requiring providers to make acquisition offers for new customers available to existing customers, rather we only require providers to be transparent with existing customers that these offers exist. As such, providers remain able to target discounted offers to attract rivals' customers, without offering these to existing customers. Even if this additional transparency alone would be sufficient for a provider to withdraw certain offers for new customers as BT suggests, we do not think this would necessarily dampen competition in a way that would lead to higher prices for customers overall. As we detail in Section 5, our research found that the inclusion of the cheapest tariff to any customer in the notifications promoted consumer awareness of what is available on the market, and that it was a prompt for consumers to engage (see paragraph 5.74). Accordingly, we consider that the cheapest tariff to any customer could instead assist the competitive process, by enhancing the ability of customers to take informed decisions and penalise providers for not offering sufficiently attractive deals.
  - b) Customers have a wide range of preferences, such that providers have a strong incentive to maintain a menu of tariffs to compete effectively for customers with differentiated needs. Therefore, it is not clear to us that providers would necessarily limit tariff choice as a result of having to add their best tariffs in end-of-contract and annual best tariff notifications in a way that would materially harm customer choice. This is particularly in a context where providers can develop algorithms to automate the selection of the appropriate best tariff from a wide set of data, thus limiting the complexity of implementing the best tariff requirements.

10.25 In any case, our decision should limit the potential for the provider's best tariffs to generate negative unintended consequences as suggested by providers, while simultaneously ensuring that the notifications achieve the objectives of Article 105(3) as detailed in Section 5 and 7. As set out in Section 5, when generating their best tariffs, providers can select the cheapest tariff from the tariffs which they publish and make generally available to the public.<sup>120</sup> This approach should limit the potential for dampening of competition, if this concern were to arise at all, by allowing providers to continue offering selective, temporary and dynamic discounts. Providers will still be able to make an improved offer when called by a customer, for example in response to discounts offered by rivals. Finally, this approach should avoid a loss of consumer choice in terms of tariff options, by reducing the complexity involved for providers in how they include best tariff advice in the notifications.

## Impact on providers

### Our December proposals

- 10.26 In our December 2018 consultation, we said that our proposals for end-of-contract notifications would generate implementation costs (such as systems development) and ongoing costs (from generating and distributing the notifications) which were similar in nature to those set out in our July 2018 consultation.
- 10.27 We said that we did not anticipate that the introduction of annual best tariff notifications would result in significant implementation costs which were not already incurred as part of the introduction of end-of-contract notifications. We noted, however, that providers would incur ongoing costs associated with annual best tariff notifications, which relate to the generation and sending of the notifications for residential customers and increased customer service costs.
- 10.28 We recognised that the expansion of our proposals to include businesses, and the addition of best tariff advice, would add to the costs for providers. We also considered that some changes from our July 2018 consultation, such as our amendment to require a financial link or independency for listing details of other contracts in the notification, would reduce the costs for providers.

### Consultation responses

- 10.29 Several responses suggested that specific areas of our proposals would lead to higher costs for providers. We set out these areas below.

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<sup>120</sup> Provided the tariffs are available on the day the notification is sent and remain available until the end of the customer's fixed commitment period (for an end-of-contract notification) or for a period of 30 days (for an annual best tariff notification).

### Costs included in our impact assessment

- 10.30 One respondent, [redacted], argued that there could be higher costs for providers where more than one method of communication was used to send the notifications. The same respondent also said that there would be a cost impact from providing additional documents in accessible format upon customer request.
- 10.31 Three expressed concerns about the costs of compliance, arguing that there was a risk of regulatory consequences from not offering a customer the correct “best tariff” and addressing this could potentially impose significant implementation costs.

### Impact from requirements for business customers

- 10.32 Several respondents argued that our proposals for businesses would be difficult to implement. They suggested that considerable investment and time would be required to implement our proposals due to the more distinct and personalised nature of business contracts.
- 10.33 Many respondents also argued that our proposals for businesses were not proportionate, or that we had not considered the cost implications of our proposals for businesses.

### Information included in the notifications

- 10.34 Many respondents said that including a comprehensive list of all services which form part of the contract, and particularly ancillary services, would be complex and add disproportionately to the costs and implementation timescales for providers.<sup>121</sup>
- 10.35 Some respondents argued that it would be difficult to identify and include information about other contracts that a customer has with them. One respondent, [redacted], argued that doing so would require significant systems development, and Virgin Media argued that there would be disproportionate incremental costs of including these linkages.
- 10.36 Some respondents proposed that the aggregation of annual best tariff notifications should not be mandatory, due to the complexity of pulling together the relevant customer information. Tesco Mobile said that such aggregation would require a significant amount of communication and data segmentation logic, which would involve additional costs.

### The provider’s best tariffs

- 10.37 Many respondents argued that providers would need to undertake significant systems development to implement the providers best tariff requirement. Vodafone and Sky argued that we had not appreciated how complex and costly it would be in practice to implement the requirements.
- 10.38 Sky argued that it takes time for providers to make changes to transactional communications. Accordingly, any requirement that providers make regular changes to

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<sup>121</sup> For example, BT argued that the inclusion of ancillary services in communications would add to systems development costs by around £360,000.

notification templates (including, for example, regular changes to the tariffs that need to be captured in the best tariff advice) would be very hard for providers to implement in an accurate and timely manner. One respondent, [X], also argued that there are significant technical complications involved in drawing in a constantly changing cheapest tariff.

- 10.39 Sky further argued that requiring best tariff advice across all services a customer purchases is likely to cause significant operational complexity for providers as they would have to develop separate notification templates for every possible combination of services.
- 10.40 One respondent, [X] said that the requirement to calculate three separate plans per customer as part of best tariff advice would significantly increase the complexity of the infrastructure required in its systems.
- 10.41 One respondent, [X], argued that the customer level analysis required to present the proposed usage-based best tariff is not currently possible in the respondents existing systems and would require development that would be costly and complex. Similarly, another respondent, [X], argued that we must have realistic expectations about the individual usage monitoring providers would be able to do to inform recommended tariffs. The same respondent, [X], argued that, since customer-level insight may not be available, it should be expected that recommendations would be based on comparable price points and product details rather than being reflective of individual customer characteristics.

### Annual best tariff notifications

- 10.42 Tesco Mobile disagreed with our assessment of the impact of annual best tariff notifications, arguing that these messages would require different templates to end-of-contract notifications as well as a different assessment of tariffs.
- 10.43 One respondent, [X], argued that the annual best tariff notifications would place a significant burden on providers.

### Our decision

- 10.44 In light of the responses, we have made certain amendments to our proposals to reduce the cost and complexity to providers of our decisions while still ensuring we achieve the objectives of the EECC to the benefit of end-users. We set out our revised assessment of impacts on providers below.

### Costs included in our impact assessment

- 10.45 As set out in our December 2018 consultation, we identify two main categories of costs to providers as a result of our decisions:
- a) Implementation costs: This includes costs associated with system development required to introduce the functionality needed to prepare and provide end-of-contract notifications and annual best tariff information, integrating these functions with existing systems and staff training. We recognise that some providers may have to incur system development costs to link different IT systems (e.g. billing and sales databases) to collect relevant information ; and

- b) Ongoing costs: This includes the cost of generating and distributing end-of-contract notifications and annual best tariff information, accounting for the costs of sending letters, emails and SMS. This also includes the cost of maintaining and updating the systems developed to implement our decisions. We recognise that these costs will be higher due to our requirement that end-of-contract and annual best tariff notifications must be sent on a standalone basis for residential customers.
- 10.46 Separately, we recognise that providers may incur costs because of increased switching amongst consumers as a result of our requirements. That said, we remain of the view that the net impact on providers need not be significant.<sup>122</sup>
- 10.47 We agree with the respondent, [3], that said there are likely to be additional costs where a provider needs to send out notifications in different formats, as contrasted with being able to send all notifications via one method of communication. We also recognise that costs may be higher where notifications must be provided in an accessible format on a customer's request. However, when considering the ongoing costs faced by providers in generating and sending out notifications, we have taken into account the fact that providers will likely send communications via different means. Providers have flexibility to choose their method for delivering the notifications, which should allow providers to choose the most cost-efficient method for them while still delivering benefits to end-users.
- 10.48 We agree with Three that providers will incur a cost in selecting best tariff advice which is consistent with our requirements. We consider that this falls under the implementation and ongoing costs we identified as part of our December 2018 consultation and have set out above.

### Impact from requirements for business customers

- 10.49 Section 8 sets out how we have adjusted the requirements applying to business customers, taking into account responses to our consultation. In summary, we recognise that the benefits to business customers, particularly larger businesses, of a more detailed notification would have been limited. Accordingly, we have reduced the prescriptive requirements as they relate to these customers.
- 10.50 Our revised approach should significantly reduce the complexity of any system developments required to implement our decisions and such changes will be unnecessary where providers already communicate with their business customers in a way which achieves the objectives of the EECC. Moreover, providers will no longer be required to incur the costs of sending a standalone end-of-contract notification and annual best tariff information where they can incorporate this requirement alongside existing communications. This should in turn lower the implementation and ongoing costs relative to our proposals in the December 2018 consultation.

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<sup>122</sup> As we detail in our December 2018 consultation, increased customer calls as a result of end-of-contract notifications and annual best tariff information also give providers an opportunity to improve retention of customers they may otherwise lose. Moreover, any increase in the cost paid to Openreach as a result of gaining a new customer will also come with the incremental revenue from those customers.

10.51 As set out in Section 8, where a business shares significant characteristics, behaviours, and needs with residential customers we would expect them to receive information that is broadly similar to that received by residential customers. We remain of the view that these businesses require more detailed notifications in order to decide how and whether to engage at the end of their fixed commitment period. We recognise that there are likely to be some implementation and ongoing costs to meet the requirements of the EECC for these customers.

#### Information included in the notifications

10.52 As set out in Section 4, we have decided that the main services taken as part of the contract must be included in the notifications. However, providers can list all services taken as part of the contract (i.e. including ancillary services) elsewhere as long as they are provided in a single, easily accessible location, and that location is referenced in the notification.

10.53 We recognise that some providers may have to incur system development costs to collate a comprehensive list of services that are part of a given contract. That said, we consider that our revised approach will reduce this cost for providers where this information is already available for customers in a given location, e.g. this information is provided on a customer's online account.

10.54 Section 4 also sets out the clarification of our position on the need to list related contracts in the notifications. Our guidance essentially limits the list of contracts to financially linked or interdependent contracts, for which we expect that there would already be linkages in existing systems. As such, this requirement should not impose the need for providers to incur costs to establish links between contracts with the same customer which do not already exist.

10.55 That said, we recognise that some providers may have to incur costs to link relevant systems that would allow them to report the name of the related contract, and the date at which the commitment period for the related contract ends.<sup>123</sup> However, we would expect that such information would be part of an existing database (either sales, marketing or billing), and that these systems could be linked on the basis of contract identifiers.

10.56 Finally, in response to providers' concerns about the complexity of linking contracts with the same provider (possibly across systems), we have modified our approach to the aggregation of end-of-contract and annual best tariff notifications. In addition to the proviso that the contracts should have fixed commitment periods ending at a similar time, our guidance now provides that end-of-contract notifications only need to be aggregated where the relevant contracts are financially linked or interdependent. We have an equivalent provision for annual best tariff notifications. We consider that this will reduce

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<sup>123</sup> While an existing contractual link means that a change to one contract causes a change in a separate related contract, providers' IT systems may not currently be linked in such a way to be able to make information about related contracts automatically available. While our decision should not cause providers to incur costs in linking contracts where there is no link currently, providers may still need to incur some systems development costs to link the systems where the relevant information is held for these different contracts.

the complexity and costs of our requirement to aggregate notifications, particularly as providers should no longer have to incur system development costs to link contracts with the same customer. We also note that aggregation of notifications should allow providers to reduce the cost of distributing our required notifications.

### The provider's best tariffs

- 10.57 We recognised in our December 2018 consultation that the inclusion of the provider's best tariffs within end-of-contract and annual best tariff notifications was likely to cause providers to incur additional implementation and ongoing costs, including systems development costs. Having considered responses to the consultation, we have made some amendments and clarifications to our December proposals, which should address several of the respondents concerns in relation to the costs of implementing the provider's best tariffs. We have covered the implications of these changes in relation to business customers in paragraphs 10.49 to 10.51 above.
- 10.58 For residential customers, we set out these changes and clarifications in Section 5. In summary, the following aspects of our best tariff requirements should reduce implementation costs and complexity to providers in providing end-of-contract and annual best tariff notifications:
- a) *Narrowing of tariffs to choose "best tariff" from:* Providers are able to select from those tariffs published by that provider and available to the public at large, which limits the number of tariffs providers need to select from. This should in turn address concerns raised by Sky in relation to the complexity and frequency of changes required to the tariffs included in the notifications.<sup>124</sup>
  - b) *More flexibility on upgrade package chosen:* Where providers choose to display an upgrade tariff, they will now have more flexibility over the way they select the tariff to display. As such providers can offer upgrade packages in line with their broader marketing strategy, and will not be required to develop algorithms and decision rules to select a specific upgrade tariff.
- 10.59 We acknowledge Sky's observation that providers will have to incur the cost of developing templates to deliver our notifications, and that these costs may be higher where a range of different templates is required to deliver appropriate tariffs. However, as set out in Section 5, we consider that it is important in certain circumstances, for providers to give their best tariffs for a bundle of services.
- 10.60 We also recognise that providers will incur implementation and ongoing costs to collect relevant information and develop decision rules to select service-based and usage-based tariffs. More generally, we acknowledge that including more than one best tariff will increase these costs. In response to the confidential comments from [X] and [X] on our provider best tariff proposals, we recognise that some providers may need to incur further

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<sup>124</sup> In particular, given that published tariffs change less frequently, it should reduce the complexity, and amount of time required, to make the necessary changes to the notification templates, thus reducing the ongoing costs to providers.

costs where they do not currently have data on usage readily available, for example to link systems where usage data is stored with systems that contain customers' billing information. We note that the service-based and upgrade variants of the provider's best tariffs will only require providers to be aware of the current tariff taken by the customer and that in some cases a usage-based tariff will not be relevant.

- 10.61 We also note that, in considering the impact on providers more generally, our revised requirements on the provider's best tariffs allow providers greater flexibility to make mutually beneficial offers to their customers. Particularly, increased flexibility over the precise upgrade offered to customers as part of the end-of-contract and annual best tariff notification will give providers greater freedom to retain customers by offering them packages which they think their customers are more likely to value.

### Annual best tariff information

- 10.62 We recognise that annual best tariff information will impose additional implementation and ongoing costs on providers. However, there is a high degree of overlap between the content of annual best tariff and end of-contract notifications for residential customers. We would also expect that the type of information included in end-of-contract notifications for business customers would be similar to that provided as part of annual best tariff information. As such, we anticipate that the majority of the implementation costs required to introduce annual best tariff information will not be incremental to those incurred as part of the introduction of end-of-contract notifications.
- 10.63 As we set out in our December 2018 consultation, we consider that the ongoing costs of annual best tariff information will include:
- a) the cost of generating the relevant information (e.g. preparing the best tariff advice, preparing templates for notifications, completing notifications with personalised information, and maintaining the relevant systems put in place);
  - b) the cost of distributing the information. For example, the cost of sending notifications where required, which is a function of the method of communication. In particular, providers will need to incur the cost of printing and postage for notifications sent via post, or instead incur a lower cost of sending an email or SMS; and
  - c) increased customer service costs. However, these calls will also give providers the opportunity to retain customers, and potentially improve retention of customers they may otherwise lose.
- 10.64 We agree with Tesco Mobile that providers will need to generate different templates for annual best tariff notifications. However, we consider these costs will form part of the ongoing costs to providers as set out above.<sup>125</sup> We are also no longer requiring annual best tariff information to be sent in the form of a notification for business customers – rather, it

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<sup>125</sup> We recognise that these costs could also be categorised as implementation costs, as there will be a cost associated with designing and generating the initial templates.

can be delivered as part of usual business account management activities. This should further reduce costs for providers relative to our December proposals.

## Implementation before the EECC deadline

### Our December proposals

10.65 As set out in Section 2, the provisions in the EECC must be implemented by 21 December 2020. However, in our December 2018 consultation, we proposed to implement the relevant parts of Article 105(3) sooner, and we considered whether there were substantial additional impacts associated with this. We considered that there would be relatively little impact on providers from implementing these provisions sooner, and that there would be positive benefits on end-users from doing so.

### Consultation responses

10.66 As set out in Section 9, most comments from respondents on the implementation period focused on the practicality of our proposed six-month implementation period, particularly following the inclusion of best tariff advice in the notifications and the extension of the requirements to all business customers. Respondents did not comment on the costs of implementing the EECC before the transposition deadline.

### Our decision

10.67 As set out in our December 2018 consultation, if we had proceeded with the proposals set out in the July 2018 consultation, we are likely to have implemented a requirement to send end-of-contract notifications and a one-off out-of-contract notification significantly ahead of the EECC transposition deadline. For those elements of our decision that were already covered by our July 2018 consultation, there is thus a limited impact from implementing the relevant provisions of the EECC before December 2020.

10.68 That said, we recognise there may be an impact from the earlier implementation of those provisions that are additional to those we included in our July 2018 consultation.<sup>126</sup> These include:

- a) the addition of best tariff advice requirements; and
- b) the requirement to provide an end-of-contract notification and annual best tariff information to larger businesses.

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<sup>126</sup> Our requirements must now be implemented by 15 February 2020, which is only around 10 months ahead of the transposition deadline. This implies that providers will have to send at most one annual best tariff notification to residential customers before the transposition deadline. Providers will therefore not be required to send more notifications to out-of-contract customers before the transposition deadline than would have been the case if we had implemented the requirements we consulted on in July 2018. As such, we do not consider that the annual best tariff notification for residential customers is an additional provision to that we consulted on in July 2018 for the purpose of our assessment of the impact of implementing our decisions before December 2020.

- 10.69 We consider that there will be a positive impact on end-users of implementing these additional provisions sooner than the transposition deadline. They will benefit from consumer protection measures earlier than if we delayed implementation.
- 10.70 We consider that the impact of early implementation of the additional provisions will have a relatively limited impact on providers. For the implementation costs associated with the additional provisions, we consider that the cost increase is likely to be limited to providers incurring these one-off costs at an earlier point in time.
- 10.71 While we recognise that providers will start to incur earlier ongoing costs associated with the additional provisions, we consider that the overall impact of this is relatively limited. This is particularly the case as we have significantly reduced the requirements on providers in relation to business customers, as well as our decision to extend the implementation period to nine months.<sup>127</sup>
- 10.72 Moreover, since we understand from providers that their costs may be raised where policy is introduced incrementally, aligning our proposals from the July 2018 consultation with the requirements of the EEEEC avoids providers potentially incurring wasted costs.

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<sup>127</sup> As set out in Section 9, we have decided to allow providers a longer implementation period of nine months to implement the requirements. As a result, the impact of earlier implementation will be reduced from what we set out in our December 2018 consultation

# 11. Conclusions

## Summary

- 11.1 Sections 3 – 9 of this document set out our decisions on how we will implement Article 105(3) of the EECC through imposing requirements, and associated guidance, on providers to send end-of-contract notifications and annual best tariff information to their customers.
- 11.2 In summary we have decided:
- i) to implement the requirements on providers to send end-of-contract notifications with best tariff advice to residential and business customers; and
  - ii) that all customers who remain out-of-contract should also receive annual best tariff information.<sup>128</sup>
- 11.3 We have made a number of modifications to our December 2018 proposals to take account of respondents comments, in particular we have amended our approach for business customers to allow providers more flexibility in how they meet the requirements to provide an end-of-contract notification and annual best tariff information.
- 11.4 We have also decided to implement a requirement for providers to retain records of notifications for at least 12 months, to enable us to monitor implementation. However, we have reduced the scope of this requirement so that providers are only required to retain notifications sent to residential customers.
- 11.5 In light of respondents comments, we have decided to give providers a longer period of time in which to implement these requirements. As set out in Section 9, providers will now have nine months to make the necessary systems changes.
- 11.6 We have assessed the impact of these requirements in a manner that we consider to be appropriate in light of our earlier work in this area and the entry into force of the EECC. As part of that assessment (see Section 10), we have considered the impact of implementing the relevant parts of Article 105(3) EECC ahead of the deadline for transposition.
- 11.7 We are giving effect to our decisions by modifying the General Conditions and setting new general conditions using our powers under section 45 of the Act. These will primarily take the form of modifications to Condition C1, which relates to contract requirements. We are also issuing guidance on how providers should comply with the new general conditions in a number of areas, when sending notifications to residential customers.
- 11.8 Below we consider respondents comments on the draft general conditions on which we consulted in December 2018, and summarise the modifications we have decided to make.

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<sup>128</sup> For residential customers, this will be in the form of an annual notification with information about their current contract. Business customers should be provided with annual best tariff information in a form that is most suitable for them.

We also set out how we consider these modifications meet the necessary legal tests and Ofcom's duties.

- 11.9 Annex A1 contains a notification of the modifications and new general conditions that we are setting to implement our conclusions. This comprises the addition of new general conditions to Condition C1 and modifications to Conditions C1 and C5 and the Definitions section of the General Conditions. Annex A2 contains the guidance we are issuing in relation to these conditions. In line with the nine-month implementation period, these general conditions and the associated guidance will take effect from 15 February 2020.

## Modifications to the General Conditions

### Our December proposals

- 11.10 Annex A1 of the December 2018 consultation contained a Notification of the draft general conditions required to implement the proposals set out in that document. We proposed to include new general conditions in Condition C1, and to amend Condition C5 and the Definitions section of the General Conditions.

### Consultation responses

- 11.11 We received a small number of drafting comments from respondents on our proposed modifications to the General Conditions.<sup>129</sup>
- 11.12 Vodafone stated that the draft additions to General Condition C1 were substantial, resulted in the wrong balance in this General Condition, and demonstrated the huge level of detailed requirements that Ofcom had proposed. Vodafone considered a more principle-based approach could be equally effective and would simplify compliance.
- 11.13 Tesco Mobile made four comments on the draft general conditions:
- a) it submitted that "best tariffs" in Condition C1.11(l) should be defined, as it is open to interpretation;
  - b) it stated that draft Condition C1.13 was at odds with the more prescriptive timeframe set out in the consultation (but it considered that the approach in C1.13 was preferable);
  - c) with respect to draft Condition C1.15, it asked whether it is Ofcom's intention to be able to request notices for review and for assessing the impact on the customer; and
  - d) it queried whether draft Condition C1.16 captured all 30-day rolling contracts and, if so, noted that this did not appear to reflect the intention set out in the consultation.

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<sup>129</sup> Comments from respondents about the substance of the requirements set out in the draft general conditions are addressed in Sections 3 to 9.

- 11.14 UKCTA and the CBR both referred to the carve out for machine-to-machine transmission services in draft Condition C1.10(a), and submitted that we should apply this carve-out consistently throughout the General Conditions and beyond.
- 11.15 [X] pointed out that there was a typographical error in some of the numbering in the draft general conditions.

## Our decision

- 11.16 In response to Vodafone’s comments, we do not consider a higher level or less prescriptive approach is appropriate for residential customers. In arriving at our decisions on the requirements for residential customers, we have balanced the need to ensure customers receive sufficient information to fulfil the objectives of the EECC with the need to give providers flexibility to communicate with their customers in the most effective way. We have sought to specify the information that we consider is necessary for residential customers to be able to make informed choices, consider changing providers when it is in their best interest to do so and assess whether they are on the best tariff and, if not, to consider what the best tariff for them might be.
- 11.17 However, as discussed in Section 3, we have decided to give providers more flexibility in how they communicate with their business customers. In accordance with that approach, we have made a number of amendments to the draft general conditions on which we consulted. These are discussed in the relevant Sections of this document, but in summary:
- a) Draft Condition C1.11 set out the required content for end-of-contract notifications, which applied in respect of both residential and business subscribers. We have now decided to adopt a differentiated approach, so that Condition C1.11 sets out the required content for subscribers who are consumers, whereas Condition C1.12 does this for business customers.
  - b) In Condition C1.12, we have adopted a “copy out” approach to Article 105(3) of the EECC for business customers.<sup>130</sup> We have deliberately not defined “best tariff advice” for business customers, to give providers flexibility to ensure the EECC objectives are met in a way which is most effective for those customers.
  - c) Conditions C1.13 and C1.14 are largely unchanged from the December 2018 consultation and require end-of-contract notifications for all subscribers to be sent in a prominent and timely manner, before the end of the fixed commitment period, and on a durable medium. However, we have removed the requirement for end-of-contract notifications for business customers to be sent as a standalone communication (see Condition C1.14).
  - d) Draft Condition C1.17 on which we consulted set out the required content for annual best tariff notifications, which applied in respect of both residential and business subscribers. We have now decided to adopt a differentiated approach to these

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<sup>130</sup> By “copy out”, we mean that we have, as far as possible, adopted the same wording as in Article 105(3).

categories of customers. The requirement in relation to business customers is contained in Condition C1.16, which is a high-level obligation to provide best tariff information at least annually (provided that no fixed commitment period applies under the relevant contract). This reflects a “copy out approach” to Article 105(3) of the EECC. In particular, it means that providers are not required to send an annual notification to their business customers; for example, best tariff information might instead be communicated to businesses annually as part of their usual account management process. As discussed above, we have deliberately not defined “best tariff information” in relation to business customers.

- e) Condition C1.17 preserves the requirement from the December 2018 consultation for consumers to receive annual best tariff notifications and Condition C1.18 specifies the content of those notifications. Conditions C1.19 and C1.20 impose obligations on providers in relation to the timing of annual best tariff notifications, and how they should be sent. As a consequence of the preceding conditions, they apply only in respect of consumers.
- f) We have also reduced the scope of the monitoring requirements in Conditions C1.15 and C1.21, so that providers are now only required to retain copies of end-of-contract notifications and annual best tariff notifications sent to consumers (and not those sent to business customers).

11.18 We recognise that the additions to Condition C1 mean there will be a large number of provisions relating to these end-of-contract and annual requirements. We are intending to make further amendments to the General Conditions to implement the other provisions of the EECC, and will be consulting on our proposed changes later in the year. Those proposed changes are likely to include further amendments to Part C of the General Conditions. We can, at that time, take a view about the balance of the conditions within that Part and propose any non-substantive amendments (e.g. ordering, re-organising) that we consider would be helpful.

11.19 In response to Tesco Mobile’s comments:

- a) We have deliberately not defined “best tariffs”, as we recognise that this may differ from one customer to the next, and we consider that it is best interpreted for residential customers by reference to a number of principles. Section 5 contains a discussion of these principles, which are set out in full in the guidance in Annex A2. This explains how providers should apply these principles to comply with the obligation in Condition C1.11(l) to include their best tariffs within notifications for residential customers. As noted above and in Section 8, we have decided not to issue guidance about best tariffs for business customers, as we consider it appropriate to give providers flexibility to deliver this in a way that makes sense for their customers.
- b) Condition C1.13 requires providers to send end-of-contract notifications in a timely manner, before the end of the subscriber’s fixed commitment period. Annex A2 contains more detailed guidance on how we expect providers to meet this requirement

for residential subscribers (which is also discussed in Section 6). The two are therefore not at odds, as Tesco Mobile suggests.

- c) As discussed in Section 9, we intend to request notifications from providers, as well as other data, to gain an understanding of the extent to which different approaches to the notifications may impact on consumer knowledge and outcomes.
- d) Condition C1.16 requires providers to provide annual best tariff information to a subscriber if he or she has a contract for public electronic communications services, which is not subject to a fixed commitment period. If the subscriber is a consumer, Condition C1.17 requires the provider to comply with this requirement by sending an annual best tariff notification. The application of these conditions will therefore be fact-specific, depending on the consumer's contract terms. A "rolling 30-day contract" would fall within the scope of these provisions, for example, if it is a contract with an initial fixed commitment period of 30 days that has since expired, or if it the contract has no fixed commitment period but is subject to a 30-day notice period.<sup>131</sup> We consider that it is appropriate for consumers on these types of contracts to receive an annual best tariff notification, if they remain with the same provider for more than one year. We have now made explicit provision for the timing of annual best tariff notifications for consumer contracts that do not contain any fixed commitment period (see the guidance on Condition C1.19).<sup>132</sup>

11.20 In response to the comments from UCKTA and the CBR, we have included a carve out for machine-to-machine transmission services in Conditions C1.10(a) and C1.16(a), which we consider to be sufficient to remove contracts for these services from the scope of the new general conditions that we are imposing in this Statement. We intend to consult on implementing the remaining end-user provisions of the EECC later this year. This will include carving out machine-to-machine transmission services from some of the existing conditions in Part C of the General Conditions, where this is necessary to transpose the requirements of the EECC.

11.21 We have corrected the typographical error highlighted by [✂]. We have also made a minor amendment to Condition C1.11(h) to add the words in brackets. This provides that the monthly subscription price payable after the end of the fixed commitment period relates not only to the services provided during that period, but also to any changes to those services that will come into effect because that period is ending. Finally, we have amended the words "*clear and comprehensive*" in Condition C1.11 and C1.18 to "*clear and comprehensible*". This better captures our intention that the notifications should be clear and understandable to the consumers receiving them.

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<sup>131</sup> In the December 2018 consultation, we set out our view that there was no need for customers on monthly rolling (30 day) contracts to receive an end-of-contract notification, and that contracts drafted as an indefinite term with a 30-day notice period would fall outside the scope of the draft general condition. However, we did not make any similar comment in relation to annual best tariff notifications.

<sup>132</sup> As noted in Section 7, we have amended Condition C1.19 to include a high-level obligation on providers to send an annual best tariff notification at least once in every 12-month period. We have moved the detailed provisions on timing and aggregation of these notifications to the guidance.

## Meeting the test for setting general conditions

### Overview

- 11.22 In Section 2, we outlined the test in section 47(2) of the Act, which must be met before we can set or modify general conditions. We consider that the general conditions in the Notification in Annex A1 are:
- a) not unduly discriminatory, as they apply equally to all providers of public electronic communications services;
  - b) proportionate, for the reasons set out in the sub-section below; and
  - c) transparent, as the general conditions are set out in full in Annex A1 and explained in detail in this document. The conditions also increase transparency by setting out a clear framework for the content, structure, format and timing for end-of-contract and annual best tariff information.
- 11.23 As part of our assessment of whether the general conditions are proportionate, we also consider that they are objectively justifiable in that, for the reasons set out in this document, they seek to implement the relevant parts of the EECC and address the harms we identified in the July 2018 Consultation.

### Proportionality

- 11.24 We consider that the general conditions in the Notification in Annex A1 are proportionate. We consider that they are an appropriate means of achieving the objectives set out in the relevant parts of the EECC, which form part of a full harmonisation suite of provisions.<sup>133</sup> We have explained in sections 3 to 9 (and in the corresponding sections of the December 2018 consultation) why each of the proposed elements of the general conditions are necessary to achieve those objectives, and to give them full effect. Taking our decisions in the round, our view is that we could not achieve the objectives of the relevant parts of the EECC with a less onerous approach than that set out in this Statement.
- 11.25 In Section 10 we consider the impact of our proposals on end-users and providers (including the impact of implementing the relevant parts of the EECC before the transposition deadline). In several instances, we have revised and clarified our proposals from those set out in the December 2018 consultation in a way that would lessen the impact on providers. For example:
- a) We have carefully considered respondents' comments and agreed that the objectives of the EECC can be achieved for business customers through a less prescriptive approach than we proposed in the December 2018 consultation. As set out in Sections 3 and 8 we have therefore decided to adopt a "copy out" approach to the EECC's provisions for business customers. This gives providers greater flexibility to

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<sup>133</sup> The EECC itself has also been subject to an impact assessment and an assessment of proportionality by the European Commission.

communicate with their business customers in a way that best suits their needs, whilst achieving the overarching objectives of the EECC. As discussed in Section 10, this should significantly reduce the complexity of any system developments required to implement our decisions and such changes will be unnecessary where providers already communicate with their business customers in a way which achieves the objectives of the EECC.

- b) As set out in Section 4, having considered respondents comments, we have amended our guidance on how providers should comply with the requirements to include details of other services provided under the relevant contract and details of other contracts with the same provider. In relation to the first, providers can set out a link to a single location (such as an online account portal) where this information is easily accessible, and only need to list the subscriber's main services and the associated aspects of those services in the notification. This should limit the system development costs required to include a comprehensive list of services in the notifications if this information is already available in a single given location. On the second, we have amended our guidance to clarify the circumstances in which providers are required to list other contracts that are financially linked or interdependent with the relevant contract. We consider that this should reduce complexity and costs identified by respondents, particularly as providers should no longer have to incur system development costs to link contracts with the same customer (possibly across systems).
- c) As discussed in Sections 6 and 7, we have modified our approach to the aggregation of end-of-contract and annual best tariff notifications. In addition to the proviso that the contracts should have fixed commitment periods ending at a similar time, our guidance now provides that end-of-contract notifications only need to be aggregated where the relevant contracts are financially linked or interdependent. Our guidance on annual best tariff notifications includes a similar provision. We consider that this will reduce complexity and costs, particularly as providers should no longer have to incur system development costs to link contracts with the same customer (possibly across systems).
- d) As explained in Section 5, we have modified our guidance on the provider's best tariffs to provide additional clarity for providers and to reduce complexity – e.g. to make clear that the provider's best tariffs can be selected from those published by that provider and generally available to the public.

## Ofcom's general duties

11.26 We conclude that the setting of the general conditions will fulfil our duty to further the interests of citizens and consumers. In particular, the introduction of end-of-contract notifications and annual best tariff notifications will provide consumers with timely information that will assist them to engage in the market and to make an informed choice about their communications services. In reaching the decisions set out in this statement, we have also had regard to the matters set out in sections 3 of the Act, including in particular to the interests of consumers in respect of choice, price, quality of service and value for money (section 3(5)); the desirability of promoting competition in relevant

markets (section 3(4)(b)); the desirability of encouraging investment and innovation in relevant markets (section 3(4)(d)), and the needs of persons with disabilities, of the elderly and of those on low incomes (section 3(4)(i)). We have also had regard to the opinions of consumers in relevant markets (section 3(4)(k)), insofar as our proposals have been informed by research into consumers' expectations of the information they should receive.

- 11.27 We also consider that the introduction of the general conditions is in line with our obligation to ensure that our regulatory activities are proportionate and targeted only at cases in which action is needed (section 3(3) of the Act). As noted above, we have made amendments to our December proposals to reduce implementation costs where possible, for example by giving greater flexibility to providers over how they implement the requirements for business customers, and extending the deadline for implementing the requirements by three months.

## Duties for the purpose of fulfilling EU obligations

- 11.28 We also assess that, by introducing the general conditions, we are acting in accordance with the six European Community requirements in section 4 of the Act. These include duties:
- a) to promote competition in the provision of electronic communications services;
  - b) to secure that our activities contribute to the development of the European internal market; and
  - c) to promote the interests of all persons who are citizens of the European Union.<sup>134</sup>
- 11.29 For the reasons set out in this statement, our assessment is that introducing the general conditions will increase protection for customers by ensuring they are given timely information on contract termination and best tariffs, which will assist them in making informed choices and engaging in the market. This could benefit them in terms of lower prices and/or a service better suited to their needs, and a saving in time and effort for customers who currently need to remember or search for the relevant information. We consider that this enhanced engagement will also penalise providers for not offering sufficiently attractive deals, thereby assisting the competitive process. Finally, by implementing the relevant parts of the EECC, we are also contributing to the development of the European internal market.

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<sup>134</sup> Read in light of Article 8 of the Framework Directive. We have also had regard to the objectives in Article 3(2) of the EECC.

# A1. Notification of new general conditions and modifications to the General Conditions under section 48(1) of the Act

## Introduction of end-of-contract notifications and annual best tariff information

### Background

- A. On 14 December 2018, Ofcom published a notification pursuant to section 48A(3) of the Act (“the **2018 Notification**”) setting out their proposals to set new general conditions; modify Conditions C1 and C5 of the General Conditions; and add new definitions to the Definitions section of the General Conditions.
- B. In the 2018 Notification and the accompanying consultation, Ofcom invited representations about any of the proposals by 1 February 2019.
- C. By virtue of section 48A(6) and (7) of the Act, Ofcom may give effect to the proposals set out in the 2018 Notification, with or without modification, only if—
  - (i) they have considered every representation about the proposals that is made to them within the period specified in the 2018 Notification; and
  - (ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- D. Ofcom received 28 responses to the 2018 Notification and have considered every representation made to them in respect of the proposals.
- E. The Secretary of State did not notify Ofcom of any international obligation of the United Kingdom for the purpose of section 48A(6) of the Act.
- F. Ofcom stated in the 2018 Notification that they considered the proposals were not of EU significance pursuant to section 150A(2) of the Act.

### Decision

- 1. In accordance with sections 45 and 48(1) of the Act, Ofcom have decided to set new general conditions and to modify the existing General Conditions.
- 2. The new general conditions and the modifications to Condition C1 of the General Conditions are set out in Schedule 1 to this Notification. The modifications to Condition C5 of the General Conditions are set out in Schedule 2 to this Notification. The new definitions being added to the Definitions section of the General Conditions are set out in Schedule 3 to this Notification.
- 3. Ofcom’s reasons for reaching this decision, and the effect of the decision, are set out in the explanatory statement accompanying this Notification.

4. Ofcom consider that they have complied with the requirements of sections 45 to 48C of the Act, insofar as they are applicable.
5. Ofcom have considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
6. The new general conditions and the modifications set out in Schedules 1 to 3 shall enter into force on 15 February 2020.
7. A copy of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 48C(1) of the Act.
8. In this Notification:
  - a. **“the Act”** means the Communications Act 2003;
  - b. **“General Conditions”** means the general conditions set under section 45 of the Act, effective from 1 October 2018, as amended or replaced from time to time;
  - c. **“Ofcom”** means the Office of Communications.
9. Words or expressions shall have the meaning assigned to them in this Notification, and any other word or expression shall have the same meaning as it has in the Act.
10. For the purposes of interpreting this Notification: (a) headings and titles shall be disregarded; and (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
11. The Schedules to this Notification shall form part of this Notification.

Signed by



**Selina Chadha**  
**Director of Consumer Policy**

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

15 May 2019

## SCHEDULE 1

1. In Condition C1 of the General Conditions, the following modifications marked in bold and highlighted in yellow shall be made to the preamble:

### C1 Contract requirements

*This condition aims to protect consumers and end-users by ensuring that contracts for a connection to a public electronic communications network or for public electronic communications services include minimum terms and information. It also sets out requirements about contract duration, **end-of-contract notifications, annual best tariff information,** facilitating changes of communications provider and end-users' rights to terminate a contract, which are designed to ensure that end-users are treated fairly and able to switch to a different provider in appropriate cases.*

2. In Condition C1, the following modifications marked in bold and highlighted in yellow shall be made to Condition C1.1:

"C1.1 **The provisions of this Condition apply as follows:**

(a) **This Condition applies Conditions C1.2 to C1.9 apply** to all providers of Public Electronic Communications Networks and/or Public Electronic Communications Services; **and**

(b) **Conditions C1.10 to C1.21 apply to all providers of Public Electronic Communications Services,**

**each of whom and each person to whom a provision applies** is a 'Regulated Provider' for the purposes of **this Condition that provision."**

3. The following provisions shall be inserted into Condition C1 after Condition C1.9:

#### "End-of-Contract Notification

C1.10 **Regulated Providers** must send an **End-of-Contract Notification** to a **Subscriber**, in the manner and form specified by **Conditions** C1.11 to C1.14, if each of the following requirements are met:

(a) the **Subscriber** has a contract with the **Regulated Provider** for **Public Electronic Communications Services**, other than machine-to-machine transmission services;

(b) the contract has a **Fixed Commitment Period**; and

(c) the terms of the contract provide (or governing law provides) for the contract to be automatically prolonged after the expiry of the **Fixed Commitment Period**.

C1.11 If the **Subscriber** is a **Consumer**, the **End-of-Contract Notification** shall include the following information in respect of the **Subscriber's** contract, in a clear and comprehensible form:

- (a) the date on which the **Fixed Commitment Period** for that contract ends;
  - (b) details of the services provided by the **Regulated Provider** to the **Subscriber** under that contract;
  - (c) the notice period (if any) which applies to the **Subscriber** under that contract (where the contract is for a **Mobile Communications Service**, the **Regulated Provider** may instead include a message that a notice period may apply);
  - (d) a message that the **Subscriber** may terminate that contract without paying an **Early Termination Charge** after the **Fixed Commitment Period** ends;
  - (e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the **Subscriber**;
  - (f) how the **Subscriber** may terminate that contract;
  - (g) the current **Core Subscription Price** payable by the **Subscriber** under that contract;
  - (h) the **Core Subscription Price** that will be payable by the **Subscriber** for the services referred to in (b) (and, where relevant, any changes referred to in (i)) after the **Fixed Commitment Period** for that contract ends;
  - (i) details of any changes to the services referred to in (b) that will come into effect because the **Fixed Commitment Period** for that contract is ending;
  - (j) the dates on which the **Fixed Commitment Periods** end for the other contracts referred to in (e);
  - (k) details of the options available to the **Subscriber** at the end of the **Fixed Commitment Period** for that contract; and
  - (l) the **Regulated Provider's** best tariffs.
- C1.12 If the **Subscriber** is not a **Consumer**, the **End-of-Contract Notification** shall inform the **Subscriber** of the end of the **Fixed Commitment Period** and how the **Subscriber** may terminate the contract. At the same time, the **Regulated Provider** must give the **Subscriber** best tariff advice relating to their services.
- C1.13 **Regulated Providers** must send an **End-of-Contract Notification** in a timely manner, before the end of the **Subscriber's Fixed Commitment Period**.
- C1.14 **Regulated Providers** must send an **End-of-Contract Notification** via a **Durable Medium** and in a prominent manner. If the **Subscriber** is a **Consumer**, the **End-of-Contract Notification** must also be separate and distinct from any other communication.
- C1.15 **Regulated Providers** must retain a record of each **End-of-Contract Notification** it sends to a **Consumer**, and the date on which it was sent, for a period of at least 12 months.

### Annual Best Tariff Information

- C1.16 **Regulated Providers** must provide best tariff information to a **Subscriber** at least annually, if each of the following requirements are met:
- (a) the **Subscriber** has a contract with the **Regulated Provider** for **Public Electronic Communications Services**, other than machine-to-machine transmission services; and
  - (b) the contract is not subject to a **Fixed Commitment Period**.
- C1.17 If a **Subscriber** is a **Consumer**, the **Regulated Provider** must comply with **Condition** C1.16 by sending an **Annual Best Tariff Notification** to that **Subscriber**, in the manner and form specified by **Conditions** C1.18 to C1.20.
- C1.18 An **Annual Best Tariff Notification** shall include the following information in respect of a **Subscriber's** contract, in a clear and comprehensible form:
- (a) a message that the contract is not currently subject to a **Fixed Commitment Period**;
  - (b) the notice period (if any) which applies to the **Subscriber** under that contract (where the contract is for a **Mobile Communications Service**, the **Regulated Provider** may instead include a message that a notice period may apply);
  - (c) details of the services provided by the **Regulated Provider** to the **Subscriber** under that contract;
  - (d) the current **Core Subscription Price** payable by the **Subscriber** under that contract;
  - (e) details of other contracts for **Public Electronic Communications Services** between the **Regulated Provider** and the **Subscriber**;
  - (f) the dates on which the **Fixed Commitment Periods** end for the other contracts referred to in (e);
  - (g) details of the options available to the **Subscriber**; and
  - (h) the **Regulated Provider's** best tariffs.
- C1.19 **Regulated Providers** must send an **Annual Best Tariff Notification** at least once in every 12-month period.
- C1.20 **Regulated Providers** must send an **Annual Best Tariff Notification** via a **Durable Medium** that is separate and distinct from any other communication, and otherwise in a prominent manner.
- C1.21 **Regulated Providers** must retain a record of each **Annual Best Tariff Notification** it sends to a **Consumer**, and the date on which it was sent, for a period of at least 12 months.

## SCHEDULE 2

1. In Condition C5 of the General Conditions, the following modifications marked in bold and highlighted in yellow shall be made to Condition C5.13:

### **C5 Measures to meet the need of vulnerable consumers and end-users with disabilities**

- C5.13 **Regulated Providers** must make available, free of charge, and in a format reasonably acceptable to any **Subscriber** who is blind or whose vision is impaired, upon their request:
- (a) any contract (or any subsequent variation) with that **Subscriber** for the provision of **Public Electronic Communications Services**, including any publicly available terms or conditions referred to in that contract or variation;
  - (b) **any End-of-Contract Notification;**
  - (c) **any Annual Best Tariff Notification;** and
  - (d) any **Bill** rendered or made available in respect of those services.

An acceptable format would, for these purposes, consist of print large enough for such **Subscriber** to read, Braille or an electronic format appropriate to the reasonable needs of the **Subscriber**.

### SCHEDULE 3

1. In the 'Definitions' section of the General Conditions, the following new definitions shall be inserted in the appropriate alphabetical place:

“**Annual Best Tariff Notification**’ means a communication sent by a **Regulated Provider** to their **Subscriber** (if the **Subscriber** is a **Consumer**), and which comprises the information described in **Condition C1.18;**”

“**End-of-Contract Notification**’ means a communication sent by a **Regulated Provider** to their **Subscriber** that comprises the information described in **Condition C1.11** (if the **Subscriber** is a **Consumer**) or **Condition C1.12** (if the **Subscriber** is not a **Consumer**);”

## A2. Additions to Ofcom's guidance under General Condition C1 – contract requirements

A2.1 This document sets out the additions we have decided to make to Ofcom's existing published guidance under General Condition C1.<sup>135</sup> We have decided to add guidance on Conditions C1.10 - C1.21 in relation to end-of-contract notifications and annual best tariff notifications for consumers.<sup>136</sup> These conditions will enter into force on 15 February 2020, at which point we will consolidate the new guidance in this Annex with the existing published guidance.

### Introduction to guidance on Conditions C1.10 – C1.21

A2.2 This guidance does not form part of the General Conditions. Its purpose is to assist Communications Providers (CPs) to comply with the requirements of Conditions C1.10 - C1.21 by outlining Ofcom's expectations as to what information should be included in the notifications sent to consumers in compliance with those conditions, and how those notifications should be sent. In particular, this guidance does not contain an exhaustive list of the information to be included in notifications for consumers (this is set out in Conditions C1.11 and C1.18).

A2.3 Words and expressions used in Conditions C1.10 - C1.21 have the same meaning when used in this guidance.

A2.4 This guidance only applies to notifications sent to subscribers who are consumers in accordance with Conditions C1.10 - C1.21.

### Conditions C1.11 and C1.18 – Content of end-of-contract and annual best tariff notifications

#### Details of services provided under the contract

A2.5 Conditions C1.11(b) and C1.18(c) require end-of-contract and annual best tariff notifications, respectively, to include *"details of the services provided by the Regulated Provider to the Subscriber under that contract."*

A2.6 In complying with these requirements, we expect the CP to give the subscriber a comprehensive list of all services which form part of the contract subject to the notification. This would include:

- a) all ancillary services currently provided under that contract; and

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<sup>135</sup> Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf).

<sup>136</sup> Specifically, we are issuing guidance on Conditions C1.11, C1.13 and C1.14 in relation to end-of-contract notifications, and on Conditions C1.18, C1.19 and C1.20 in relation to annual best tariff notifications.

- b) any service supplied by a third party, if the provision of that service to the subscriber forms part of that contract.
- A2.7 The full list of all services does not need to be listed in the notification itself, provided that:
- a) the subscriber's main services, and aspects of those services, are listed in the notification itself;
  - b) the full list of all services is provided in a single location;
  - c) that location is easily accessible to the subscriber; and
  - d) a reference to the location of that list is included in the notification.
- A2.8 For example, mobile and broadband CPs provide call, SMS and data services, with associated connection speeds and allowances. We consider these to be the main services which, combined with the associated aspects of those services, form the service package the subscriber receives from their CP. They must be listed in the notification itself.
- A2.9 The CP may also provide other services to the subscriber as part of the contract, for example over-the-top content services for music and video streaming or cloud storage, but we would not consider these to be the subscriber's main services. These services can be listed in another location provided that the conditions above are met. The other location could be, for example, an annex to the notification. The annex should then be referenced in the main part of the notification. Alternatively, the CP could provide the full list of services in an online location and provide a link to that location in the notification.

### **Details of any changes to services provided under the contract because the fixed commitment period is ending**

- A2.10 Condition C1.11(i) requires an end-of-contract notification to include *"details of any changes to the services referred to in Condition C1.11(b) that will come into effect because the Fixed Commitment Period for that contract is ending."*
- A2.11 In complying with this requirement, CPs should apply the principles described above in paragraphs A2.5 to A2.9 to set out the changes to the listed services that will come into effect because the fixed commitment period is ending. Any changes to the main services provided under the contract, and the associated aspects of those services, should be included in the notification itself. A full list of changes to the services provided under the contract may be listed elsewhere (subject to compliance with the requirements described above).

### **Details of other contracts taken with the same provider**

- A2.12 Conditions C1.11(e) and C1.18(e) require end-of-contract and annual best tariff notifications, respectively, to include *"details of other contracts for Public Electronic Communications Services between the Regulated Provider and the Subscriber."*
- A2.13 We expect the "details of other contracts" to comprise a list of the following contracts:

- a) if termination of the contract subject to the notification (the “primary contract”) triggers an impact on another contract for public electronic communications services between the CP and the subscriber (the “secondary contract”), then the secondary contract must be listed; and
- b) if termination of a secondary contract would trigger an impact on the primary contract, then the secondary contract must be listed.

A2.14 An impact from primary to secondary contract (or vice versa) could be a financial or other type of impact (e.g. the loss of a discount, automatic termination, changes to terms and conditions or change to services or allowances).

A2.15 In the remainder of this guidance, we refer to these secondary contracts described in paragraph A2.13(a) and (b) as “financially linked or interdependent”.

## How to terminate that contract

A2.16 Condition C1.11(f) requires an end-of-contract notification to include information on “*how the Subscriber may terminate that contract*”.

A2.17 In complying with this requirement, we expect CPs to take account of our guidance in relation to Condition C1.3 on conditions and procedures for contract termination.<sup>137</sup>

## Options available to the subscriber

A2.18 Condition C1.11(k) requires an end-of-contract notification to include “*details of the options available to the Subscriber at the end of the Fixed Commitment Period for that contract*”.

A2.19 Condition C1.18(g) requires an annual best tariff notification to include “*details of the options available to the Subscriber*”.

A2.20 We expect “details of the options available” in both contexts to include advice to subscribers that they can:

- a) stay on their existing contract;
- b) switch to a new contract with the same CP (including but not limited to those referred to as part of the provider’s best tariffs);
- c) switch to a new contract with a different CP; and
- d) for subscribers on bundled handset and airtime mobile contracts only, switch to a SIM-only deal.

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<sup>137</sup> Currently available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf). However, when this guidance is consolidated with our existing guidance on Condition C1, it will form part of the same document.

A2.21 The advice should also inform subscribers that some CPs may offer new customers better deals and that they may get a better deal if they bundle the services they have with that or any other CP.

### The Provider's best tariffs

A2.22 Conditions C1.11(l) and C1.18(h) require end-of-contract and annual best tariff notifications, respectively, to include "*the Regulated Provider's best tariffs.*"

A2.23 For subscribers who are consumers, we expect this to consist of the following tariffs, where applicable:

- a) a tariff, based on the services the subscriber receives, that is the cheapest available to that subscriber;
- b) a tariff, based on the services the subscriber receives, that is the cheapest tariff available to any subscriber (if not the same as in (a));
- c) unless the CP can demonstrate that it is not relevant to the subscriber's service(s), a tariff based on the subscriber's usage, that is the cheapest available to that subscriber (if not the same as (a));
- d) where the subscriber has a bundled mobile handset and airtime contract, the cheapest available SIM-only tariff based on the services the subscriber currently receives; and
- e) where a CP chooses to include one, an upgrade tariff.

A2.24 Where a tariff is based on the services the subscriber receives, CPs should give a tariff consisting of a package of services that, in relation to the subscriber's main services and the associated aspects of those services,<sup>138</sup> are most similar to the services the subscriber currently receives.

A2.25 Where a tariff is based on the subscriber's usage, CPs should give a tariff consisting of a package of services that takes into account the subscriber's likely usage of their main services and the associated aspects of those services.

A2.26 The cheapest available tariff means that at the lowest cost published by that CP and generally available to the public, for example on its website or in its stores. However, the CP may choose instead to present an alternative tariff to the subscriber as the cheapest available, provided that it is lower cost than the cheapest generally available tariff.

A2.27 Tariffs presented as available to a subscriber must be available to them as of the date of the notification. In relation to end-of-contract notifications, they should remain available at least until the end of the subscriber's fixed commitment period. In relation to annual best tariff notifications, they should remain available for at least 30 days from the date of the notification.

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<sup>138</sup> We discuss at paragraphs A2.8 and A2.9 what we mean by a subscriber's main services, and the associated aspects of those services.

- A2.28 CPs should state clearly if a subscriber is not eligible for a tariff, explain why they are not eligible and why the tariff is being shown to them.
- A2.29 If CPs choose to include an upgrade tariff, it should be one which, with reasonable objective justification, they consider to represent a subscriber's best tariff.
- A2.30 If multiple public electronic communications services are provided under the contract subject to the notification (e.g. a dual or triple play contract), the tariffs the CP presents should be for a bundle in relation to those services.
- A2.31 If the CP provides multiple public electronic communications services to the subscriber, but some are provided under the contract subject to the notification and some under a financially linked or interdependent contract<sup>139</sup>, the tariffs the CP presents should be for a bundle in relation to those services in the following circumstances:
- a) in an end-of-contract notification, if either:
    - i) the 31-day window<sup>140</sup> for the financially linked or interdependent contract overlaps with the 31-day window for the contract subject to the notification; or
    - ii) the financially linked or interdependent contract is not subject to a fixed commitment period when the notification is sent;
  - b) in an annual best tariff notification, if the financially linked or interdependent contract is not subject to a fixed commitment period when the notification is sent.

## Conditions C1.13 and C1.14 – how to send end-of-contract notifications

### Timing

- A2.32 Condition C1.13 requires CPs to send end-of-contract notifications in “*a timely manner, before the end of the Subscriber’s Fixed Commitment Period.*”
- A2.33 In complying with this requirement in relation to subscribers who are consumers, we expect CPs to send notifications between 10 and 40 days before the end of the fixed commitment period (we refer to this elsewhere in this guidance as the “31-day window”).<sup>141</sup>
- A2.34 Where a consumer is approaching the end of the fixed commitment period of more than one contract, we expect CPs to aggregate the end-of-contract notifications into a single message if:

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<sup>139</sup> See paragraphs A2.13 to A2.15 for an explanation of this term.

<sup>140</sup> See paragraph A2.33 for an explanation of this term.

<sup>141</sup> This is subject to an exception in relation to aggregated notifications, as set out in paragraph A2.35.

- a) the contracts subject to the notifications are financially linked or interdependent;<sup>142</sup>  
and
- b) the 31-day windows for those contracts overlap.<sup>143</sup>

A2.35 The aggregated notification should then be sent within the earlier of the 31-day windows.

## Prominence

A2.36 Condition C1.14 requires CPs to send end-of-contract notifications in “*a prominent manner.*”

A2.37 In complying with this requirement in relation to subscribers who are consumers, we expect CPs to provide information in an end-of-contract notification with the following given first:

- a) the date on which the fixed commitment period for that contract will end;
- b) the current monthly subscription price paid by the subscriber and the monthly subscription price that will come into effect once the fixed commitment period ends.

A2.38 The provider’s best tariffs should come at the end of the notification and should be given equal prominence to one another.

A2.39 Where an end-of-contract notification is sent via an SMS, we expect the following information to appear in the SMS message:

- a) the date on which the fixed commitment period for that contract will end;
- b) the monthly subscription price currently paid by the subscriber;
- c) the monthly subscription price that will come into effect once the fixed commitment period ends;
- d) details of the options available at the end of the fixed commitment period; and
- e) a message that further information is available, including tariffs that the provider is required to tell the subscriber about, and an indication of where that information is available.

A2.40 The remaining information required by Condition C1.11 should be made available to the subscriber in a single location, which is referred to in paragraph A2.39e).

A2.41 Condition C1.14 also requires that “[i]f the Subscriber is a Consumer, the End-of-Contract Notification must also be separate and distinct from any other communication”. This does not prevent a CP from aggregating notifications in line with this guidance.

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<sup>142</sup> See paragraphs A2.13 to A2.15 for an explanation of this term.

<sup>143</sup> CPs may also choose to aggregate notifications (including aggregating an end-of-contract and annual best tariff notification) in other circumstances, subject to compliance with the General Conditions and the remainder of this guidance.

## Condition C1.19 and C1.20 – how to send annual best tariff notifications

### Timing

- A2.42 Condition C1.19 requires CPs to send an annual best tariff notification to a subscriber who is a consumer “*at least once in every 12-month period*”.
- A2.43 We expect CPs to comply with this requirement as follows:
- a) For contracts that are already in force at the date of entry into force of Condition C1.19, the first annual best tariff notification should be sent within 12 months of that date. An exception to this is where the contract is subject to a fixed commitment period when Condition C1.19 enters into force. The subscriber will in this case receive an end-of-contract notification prior to the end of their fixed commitment period. The first annual best tariff notification should then be sent within 12 months following the date on which the end-of-contract notification was sent.
  - b) For contracts entered into after the date of entry into force of Condition C1.19, the first annual best tariff notification must be sent within the first 12 months of the contract term. An exception to this is where the contract contains a fixed commitment period. In that case, the annual best tariff notification should be sent within 12 months of the date on which the CP has sent an end-of-contract notification in relation to that contract.
  - c) Second and subsequent annual best tariff notifications should then be sent within 12 months of the previous one.
  - d) If a subscriber has two or more contracts that are not subject to a fixed commitment period and those contracts are financially linked or interdependent<sup>144</sup>, the CP should aggregate the annual best tariff notifications for those contracts into a single communication (we would still expect the CP in these circumstances to observe the guidance at a) to c) above).<sup>145</sup>

### Prominence

- A2.44 Condition C1.20 requires CPs to send annual best tariff notifications to subscribers who are consumers in “*a prominent manner*.”
- A2.45 In complying with this requirement, we expect CPs to provide information in the annual best tariff notification with the following given first:
- a) the message that the contract is not subject to a fixed commitment period; and

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<sup>144</sup> See paragraphs A2.13 to A2.15 for an explanation of these terms.

<sup>145</sup> CPs may also choose to aggregate notifications (including aggregating an end-of-contract and annual best tariff notification) in other circumstances, subject to compliance with the General Conditions and the remainder of this guidance.

- b) the current monthly subscription price under that contract.
- A2.46 The provider's best tariffs should come at the end of the notification and should be given equal prominence to one another.
- A2.47 Where an annual best tariff notification is sent via an SMS, we expect the following information to appear in the SMS message:
- a) a message that the fixed commitment period for that contract has ended;
  - b) the current monthly subscription price paid by the subscriber under that contract;
  - c) details of the options available to the subscriber;
  - d) a message that further information is available, including tariffs that the provider is required to tell the subscriber about, and an indication of where that information is available.
- A2.48 The remaining information required by Condition C1.18 should be made available to the subscriber in a single location, which is referred to in paragraph A2.47d).
- A2.49 Condition C1.20 also requires CPs to send annual best tariff notifications to subscribers who are consumers via a durable medium "*that is separate and distinct from any other communication*". This does not prevent CPs from aggregating notifications in line with this guidance.

## A3. End-of-contract notification examples

### Letter example

Figure 1: End-of-contract notification - Letter format (front)

**Your TV, broadband and landline contract is ending**

Dear Customer

The minimum contract period for your TV, broadband and landline contract ends on 31<sup>st</sup> July 2019. You currently pay **£43** per month, after 31<sup>st</sup> July you will pay **£48**.

Now that your contract is ending you could:

- **Do nothing and keep your existing service for £48 per month;**
- **Sign up to a new contract with us; or,**
- **Switch to a different provider.**

Remember you may be able to get a better deal as a new customer with another provider. You may also get a better deal if you purchase your TV, broadband and landline services alongside any other services you have as part of a combined deal with us or another provider.

If you want to cancel your service or switch to a different provider, you will need to let us know at least 30 days in advance. You will not pay any cancellation fees to do this if your services end after 31st July. To cancel your services or discuss your options get in touch via your online account or by calling us on 0800 123 4567.

A summary of the changes that will apply from 31<sup>st</sup> July is provided below.

| Current deal  | After 31 <sup>st</sup> July 2019   |
|---|--|
| <b>Broadband, Talk and Original TV</b><br>- 11 MB Broadband (av. speed)<br>- 50GB of downloads<br>- Line rental and anytime calls<br>- 7 Cinema and 10 kid's channels<br>- <i>You also get 10% off your mobile contract</i> | <b>Broadband, Talk and Original TV</b><br>- 11 MB Broadband (av. speed)<br>- 50GB of downloads<br>- Line rental and anytime calls<br>- 7 Cinema and 10 kid's channels<br>- <i>You'll keep your mobile discount (your mobile contract ends 25 October 2019)</i> |
| <b>£43</b><br>a month   | <b>£48</b><br>a month  |

*See the next page for full details of your services and changes after 31<sup>st</sup> July*

**Thinking about signing a new contract? Here are some deals to consider**

Ofcom, the communications regulator, requires us to tell you about these tariffs to help you decide what to do about your services. Tariff 4 is not available to you but we are required to include it so you can see what kinds of deals new customers can get from providers. You can call us or log into your account to see more options.

|  |   |
|--|---|
| <b>1 Broadband, Talk and Original TV</b><br>- 11 MB Broadband (av. speed)<br>- 50GB of downloads<br>- Line rental and anytime calls<br>- 7 Cinema and 10 kid's channels                        | What you have now:<br><b>£36</b><br>a month for 18 months   |
| <b>2 Broadband Unlimited, Talk and Original TV</b><br>- 11 MB Broadband (av. speed)<br>- Unlimited downloads<br>- Line rental and anytime calls<br>- 7 Cinema and 10 kid's channels            | More data:<br><b>£38</b><br>a month for 18 months           |
| <b>3 Unlimited Fibre Broadband, Talk and Original TV</b><br>- 36 MB Broadband (av. speed)<br>- Unlimited downloads<br>- Line rental and anytime calls<br>- 7 Cinema and 10 kid's channels      | Fibre & more data:<br><b>£40</b><br>a month for 18 months   |
| <b>4 Broadband, Talk and Original TV (not available to you)</b><br>- 11 MB Broadband (av. speed)<br>- 50GB of downloads<br>- Line rental and anytime calls<br>- 7 Cinema and 10 kid's channels | New customers only:<br><b>£34</b><br>a month for 18 months* |

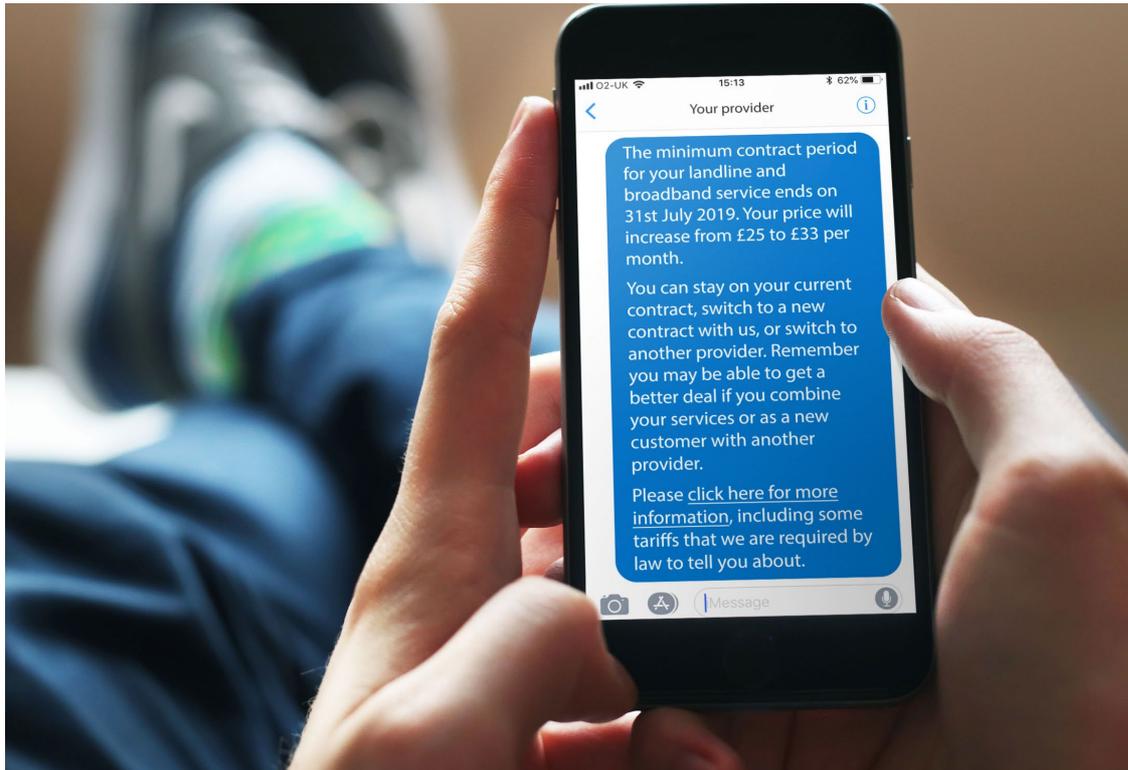
\* You are not eligible for this tariff as it's a deal that includes a new customer discount.

Figure 2: End-of-contract notification - Letter format (back)

*Your current services and what you'll have after 31st July*

|   | <i>Current deal</i> | <i>After 31<sup>st</sup> July 2019</i> |
|---|---------------------|--|
| <i>Broadband:</i>                         |                     |  |
| - 11 MB Broadband (av. speed)             | ✓                   | ✓                                      |
| - 50GB of downloads                       | ✓                   | ✓                                      |
| - WiFi router                             | ✓                   | ✓                                      |
| - Virus protection                        | ✓                   | ✓                                      |
| - Parental controls                       | ✓                   | ✓                                      |
| - Spotify add on                          | ✓                   | ✗                                      |
| <i>Original TV:</i>                       |                     |  |
| - 7 cinema channels                       | ✓                   | ✓                                      |
| - HD channels                             | ✓                   | ✗                                      |
| - 10 kids channels                        | ✓                   | ✓                                      |
| - extra set to box                        | ✓                   | ✓                                      |
| - Netflix add on                          | ✓                   | ✗                                      |
| <i>Home phone:</i>                        |                     |  |
| - Line rental                             | ✓                   | ✓                                      |
| - Anytime Calls                           | ✓                   | ✓                                      |
| - International calls to Friends & Family | ✓                   | ✗                                      |
| - Call Protect                            | ✓                   | ✓                                      |
| - Caller ID Display                       | ✓                   | ✓                                      |
| - Answer service                          | ✓                   | ✓                                      |
| <i>Other:</i>                             |                     |  |
| Free Amazon Prime membership              | ✓                   | ✗                                      |

Figure 3: End-of-contract notification - SMS format



## A4. Glossary and abbreviations

**Act:** The Communications Act 2003

**Billing system:** A software tool that manages the billing of a customer's services.

**Bundle:** A combination of more than one service provided by a single communications provider. This can include different types of service (e.g. broadband and landline, or pay TV and broadband) and be provided under one or multiple contracts.

**Communications provider (or provider):** A person who provides an electronic communications network or provides an electronic communications service, as defined in the Communications Act 2003. The terms 'communications provider' and 'provider' are used interchangeably throughout this document.

**Dual play:** Landline and broadband services provided by a single communications provider.

**Early termination charge:** A charge that may be payable by a consumer for the termination of a contract before the end of any fixed commitment period (or subsequent fixed commitment period).

**End-of-contract:** The end of a customers' fixed commitment period

**End-user:** A user not providing public electronic communications networks or publicly available electronic communications services;

**European Electronic Communications Code (EECC):** Directive (EU) 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code. A new Directive which updates and replaces the four Directives that currently make up the EU regulatory framework for electronic communications.

**General Condition ('GC'):** A general condition imposed by Ofcom under section 45(2)(a) of the Act.

**In-contract** refers to customers who are within the fixed commitment period for any service provided by the communications provider.

**Mbit/s:** Megabits per second (1 Megabit = 1 million bits). A measure of bandwidth in a digital system.

**Fixed commitment period (or minimum contract period):** The fixed period of time over which the communications provider and a customer have entered into an agreement for communications services and for which an early termination charge may be payable by the customer if they cancel their contract during this period.

**Machine to Machine (M2M):** Wired and wireless technologies that allow systems to communicate with each other.

**Mobile:** A mobile telephony subscription, i.e. a service including the provision of a SIM, which enables a customer to make and receive mobile voice calls and SMS, and/or use data services through a mobile handset.

**Out-of-contract** refers to customers who are outside of the fixed commitment period but are still paying for a service (e.g. broadband, mobile, landline) provided by the provider (e.g. via a rolling monthly contract).

**Pay TV:** A subscription-based television service, usually charged at a monthly fee, offering multichannel television channels beyond those available free-to-air. It can be delivered through cable, satellite, digital terrestrial and/or the internet (IPTV).

**Public electronic communications service (PECS):** Any electronic communications service that is provided so as to be available for use by members of the public.

**Quad play:** Landline, broadband, pay TV and mobile provided by a single communications provider.

**Qualitative research:** Semi-structured primary research (often held in focus groups) involving small numbers of selected individuals. The results are collected through insights and behaviours observed or noted from the sessions.

**Quantitative research:** Structured primary research (often a survey) to collect quantifiable data from a sample of participants which represent a sample of the population of interest.

**Residential contract:** Those services predominantly targeted towards residential customers (rather than businesses)

**SIM-only:** A contract between a mobile network provider and a customer whereby the customer is only paying for the monthly network service and not a handset.

**Small business customer:** A customer who carries on an undertaking for which no more than ten individuals work (whether as employees or volunteers or otherwise), but who is not himself a communications provider.

**SMEs:** Small and medium sized enterprises are businesses with 249 or fewer employees.

**Standalone:** Where customers take only a single service from a communications provider and not a bundled service. E.g. standalone mobile refers to where a customer only takes a mobile service from their communications provider.

**Standard broadband:** Broadband services that deliver download speeds of less than 30Mbit/s, typically over a copper telephone line.

**Subscriber:** Any end-user that is party to a contract with a provider of public electronic communications services for the supply of such services.

**Superfast broadband:** Broadband services that deliver download speeds of 30Mbit/s or higher, typically over fibre-to-the cabinet connection or coaxial cable (on Virgin Media's network).

**Triple play:** landline, broadband and pay TV services provided by a single communications provider.

**Upgrade / Downgrade:** Where customers change the service(s) received from their communications provider, or the terms on which they do so, but do not switch to another provider.

**User:** A natural or legal person using or requesting a publicly available electronic communications service.