BT response to Ofcom's consultation:

"Fair treatment and easier switching for broadband and mobile customers, proposals to implement the new European Electronic Communications Code"

Comments should be addressed to:
BT Group Regulatory Affairs,
BT Centre,
London,
EC1A 7AJ
Regulatory.affairs@bt.com

1 Summary

We, like Ofcom, believe that customers benefit most from the highly innovative and competitive telecommunications markets we see in the UK today. We understand that the objective of the European Electronic Communications Code (EECC) is to better inform and protect customers. However, we do not consider that the UK market and its customers will benefit from a direct transposition of all aspects of the EECC. Some of the requirements risk driving worse outcomes for customers, dampening competition and dis-incentivising innovation.

Given Brexit, there is a unique opportunity for Ofcom to take a more sophisticated and proportionate approach to implementation of the EECC to secure the best outcome for UK customers. Some of the requirements of the EECC simply should not be transposed. Timeline flexibility would enable Ofcom to push ahead on some key EECC issues that will drive better outcomes for customers. But, hold back on areas where a direct transposition of EECC requirements would risk driving worse outcomes for customers.

We recommend that Ofcom carries out research, trials and a full impact assessment before considering implementing those requirements that could drive a worse outcome for customers. This would allow Ofcom to determine if there is demonstrable harm that needs addressing. If there is harm, Ofcom should work with providers to develop alternative more proportionate methods to address that harm. This approach better supports the vibrant UK market without risking significant unintended consequences for UK customers.

Timeline flexibility would also allow Ofcom time to consider the benefits of recent interventions e.g. end of contract and annual best tariff notifications, and assess the impact of providers' fairness commitments. It would enable providers to focus on implementing EECC requirements where there is potential value for customers e.g. cross-platform switching and handset unlocking. While allowing the market breathing space to assess how competitive innovation, such as convergence and handset financing, which will deliver even better outcomes for customers, can be supported by an appropriate regulatory framework.

Although we know Ofcom feels bound by the implementation timeframe in the EECC, this date was determined by the EU without an assessment of the feasibility of implementing a full transposition in member states. The specific complexity and the genuine time that it will take to implement in the UK was not fully taken into account. Ofcom is aware that it usually takes 12-months, working at pace, to implement a single major regulatory change project. It is simply not feasible to expect the EECC to be implemented in less than 24-months given the size of the changes being proposed. Furthermore, we foresee a perfect storm at the end of 2020 where the EECC must be implemented just 10 days before we are due to formally leave the EU. It cannot be sensible to knowingly place this burden of significant business risk and uncertainty on

providers. We are not aware of any other regulated market attempting to do the same.

We do not consider that the UK market and its customers will benefit from a direct transposition of all aspects of the EECC. We have particular concern with the fact that:

- Several of the new requirements are overly prescriptive, disproportionate (as there is no current case for change based on evidence of customer harm) and not reflective of the vibrant competitive markets we see in the UK. We are therefore concerned that these requirements could actually drive a worse outcome for customers. As discussed in Section 3.
- Ofcom has already put in place adequate protections in many of the areas the EECC is looking to address. Providers have also developed ways of delivering many of the same underlying benefits that the EECC now seeks to create, and are in the process of going further. These changes have been, and are being, implemented in a considered way that meets the needs of the UK market. But without the risk to customer experience and innovation that the prescriptive approach of the EECC will bring. As discussed in Section 4.
- No new customer harm has been identified. But some of the new regulations could have unknown and possible unintended negative consequences for providers and customers. We consider that the UK's already robust and effective legal and regulatory regime addresses the policy concerns behind the EECC. In particular, the proposal to remove material detriment and significantly extend customer's termination rights, is unwarranted and should not be transposed into the General Conditions. As discussed in Section 4b.

If Ofcom does however determine to implement the EECC as proposed, it must take into consideration our proposals to limit the worst of the potential negative impacts - as set out in detail in Section 4.

Separately, we would urge Ofcom to use its discretion in relation to definitions of business customers, to avoid disproportionate regulation and unintended consequences from the regulation. As discussed in section 4e.

Ofcom should:

- Take a more targeted approach to implementing the EECC, reflective of the vibrant UK markets, only imposing interventions where there is demonstrable harm. If no harm, issue a statement confirming current protections meet the aims of the EECC.
- For those areas of the EECC that present likely negative outcomes for customers:
  - Undertake research to assess what harms, if any, need addressing; if the interventions proposed will address that harm or if other interventions would be more proportionate; and
  - Trial the effectiveness of proposed interventions to determine if they will likely improve customer outcomes, have no effect or lead to poorer outcomes.
- Seek implementation timeline flexibility from the UK Government and the EU.
- Allow 24-months from final statement for implementation, where it does find evidence that intervention is needed, to reflect the significant deployment burden of the EECC.
- Use its discretion to update its definition of "Not For Profit Customer" to include a staff headcount threshold, and to remove the financial criterion requirement in the definitions of 'Microenterprise' and 'Small Enterprise Customer'.

The remainder of this documents discusses our concerns in more detail. Answers to Ofcom's consultation questions are set out at Annex A.

2 Implementation timeline flexibility

Summary:

The UK telecoms markets are thriving and highly competitive. In many areas we have already evolved different ways to deliver the same underlying benefits that the EECC now seeks to create.

The prescriptive nature of certain of the requirements of the EECC will have significant unintended negative consequences for UK customers and providers. Given Brexit, there is a unique opportunity for Ofcom to take a different approach – based on underpinning principles of proportionality and customer benefits.

Notwithstanding our concerns in regards to the EECC, the 21 December 2020 implementation deadline is unrealistic for the significant changes proposed.

Ofcom should:

- Allow time for the post-Brexit landscape to become clear, whilst robustly considering if progressing with the proposals that have the highest risk of negatively impacting customers is the right thing to do for the UK telecommunications market, and
- Allow 24-months from final statement for implementation, where it does find evidence that intervention is needed.

The EECC introduces a number of prescriptive requirements, which do not support the vibrant UK market

Ofcom states that, "*there remains some uncertainty over the UK's future relationship with the European Union. […] we need to consult now […] to introduce […] the EECC. […] to change our rules before the deadline for transposition [..] of 21 December 2020 […] should the requirement to transpose Directives still apply to the UK at that time*".[1] Ofcom is focusing on ensuring the UK meets the December deadline even though the EECC implementation date is 10 days before the end of the Brexit transition period.

Given Brexit, there is an opportunity for Ofcom to take a different approach to implementing the EECC requirements – based on principles of proportionality and customer benefits. This will ensure we can avoid the unintended negative consequences of prescriptive rules, not designed to serve the needs of highly competitive markets such as we have in the UK.

Some of the current proposals are major changes, which will impact commercial strategies, require system builds and changes to third party contracts. Ofcom should seek to allow time for the post-Brexit landscape to become clear. This would also give Ofcom space to robustly consider if progressing with the most negatively impactful changes within the EECC is the right thing to do. Our view is that those changes risk

[1] Fair treatment and easier switching for broadband and mobile customers - Proposals to implement the new European Electronic Communications Code, 17 Dec 2019, Par 2.3

creating a worse customer experience, do not reflect the maturity of the UK market and are at odds with the competitive direction of travel. As discussed in section 4.

The UK telecommunications market has already evolved different ways to deliver the same underlying benefits to customers that the EECC is now trying to achieve but in a much less-prescriptive way. For example, customers are already given all the material information they need before entering into a contract and the material detriment test already allows customers to leave their contract if a provider makes an unforeseen change to their contract that will have a material impact on them. Our market's current approach is considerably more supportive of the causal link between innovation and good customer outcomes.

We therefore ask Ofcom to seek implementation timeline flexibility from the UK Government and the EU in light of Brexit uncertainty. This would also allow Ofcom time to:

- Assess the benefits of recent interventions, for example end of contract and best tariff notifications;
- Allow time to assess the impact of providers' fairness commitments;
- Work with providers to robustly implement interventions where there is potential value for customers e.g. cross-platform switching and handset unlocking, and
- Give Ofcom, and the market, breathing space to assess how competitive innovation can be supported by an appropriate regulatory framework to give the best outcome for UK consumers.

All UK businesses are spending significant time and resource this year preparing for a variety of Brexit scenarios. Considerable effort will be going into making sure that the markets still function in the same essential terms as they do today. It is unrealistic to assume that providers can plan for a post-Brexit market at the same time as implementing the EECC. We foresee a perfect storm at the end of 2020 where EECC must be implemented just 10 days before we are due to formally leave the EU. It cannot be sensible to knowingly place this burden of significant business risk and uncertainty on providers. We are not aware of any other regulated market attempting to do the same.

The timescale for implementation is unrealistic for the most significant changes

Even though Ofcom is only just consulting it has stated the 21 December 2020 deadline remains. Even if Ofcom publishes its statement document in April 2020, providers will have at most 9-months to scope, build, fully test then implement solutions. But in reality providers may have a much shorter implementation window, as recently Ofcom has taken on average four and a half months to publish statements on its last seven consultations, which would suggest a statement date of July. This would truncate the implementation time to just 6-months. Additionally, we understand that in relation to the preferred industry process for cross-platform switching, a further consultation is planned, which will further reduce the time available for implementation of this aspect of the EECC requirements.

Across BT, EE and Plusnet, all major systems development work is organised into fixed releases – that allow time for planning, development, testing and then deployment. Our roadmap is tightly managed to ensure we deliver as effectively and efficiently as possible. Timescales for a particular project will be driven by its complexity. Ofcom is already aware of the time it takes to implement significant regulatory changes, as reflected in the 12-month implementation timescales allowed for both its review of the General Conditions and end of contract notifications. Due to the nature of some of the requirements of the EECC, for example the requirements for pre-contract information and a contract summary; removal of material detriment and extended rights to terminate bundles; communications in alternative formats; cross-platform switching and one month to port, and emergency video relay, we will need to ✂

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If Ofcom feels it is bound by the 21 December 2020 deadline, it must make a statement of administrative priorities that it will not take action if providers are not compliant by that date.

3 Ofcom should intervene proportionately only where there is proven customer harm

Summary:

Ofcom has presented no evidence of customer harm to support any of the proposals, two of which - pre-contract information / contract summary and increased rights to exit - are particularly likely to have a significant negative impact on the market by disengaging customers, and depressing competition and innovation. We consider neither of these proposals to be proportionate or objectively justifiable.

Ofcom should:

- Assess the level of customer harm and undertake a full impact assessment for the most significant proposals, discussed in Section 4 of this document;
- Trial the effectiveness of these proposed interventions that are most likely to have a negative impact for customers, to determine if they will likely improve customer outcomes, have no effect or lead to poorer outcomes;
- Undertake customer research to understand: a) if there is any harm that needs addressing, b) if the interventions proposed will address that harm and c) whether other interventions would be more appropriate, and
- Carry out a full impact assessment, to determine whether the requirement (and timeline) for providers to notify business customers when they have reached a limit in their plan, is proportionate.

Ofcom has presented no evidence of customer harm to support any of the proposals

Ofcom research suggests that people are broadly happy with their communications services.[2] Ofcom also acknowledges that the UK's telecoms markets are among the most competitive in the world. It considers that this competition has "*delivered significant choice and value for money for most customers*".[3] It goes on to state that, UK mobile prices are lower than in France, Germany, Italy, Spain and the US. While at the same time, broadband customers are generally getting more for less. Average monthly data use has increased sharply in recent years, while household spend on broadband remains largely the same. Ofcom also stated that it wishes to "*continue to promote competition to help ensure customers can access faster, better services*."

Two of Ofcom's proposals are radical interventions that could have a significant impact on the telecoms markets. These are:

a) The requirement to provide both pre-contract information and a contract summary, and

b) Significantly increased rights for customers to exit any or all linked contracts for any non-beneficial changes, however small and regardless of which contract is subject to the change. Ofcom has however presented no evidence of customer harm to justify either of these interventions.

Interventions of this magnitude can directly override the functioning of a highly competitive market such as telecommunications

The whole market context, including evidence of customer harm, needs to be carefully considered. As does the design of interventions so that we avoid unintended negative consequences, which may be harmful for customers and dampen competition. Ofcom's normal thorough approach to outcomes and proportionality has not, however, been followed in this case as it has not undertaken any impact assessments.

As we discuss in detail in Sections 4a and 4b below, some of Ofcom's proposals are too prescriptive and there is a real risk that they will, instead of protecting customers, lead to a worse outcome for customers. They are also too broad for providers to be able to implement in ways that do not negatively impact the customer journey or risk dampening innovation.

Ofcom should take a more nuanced approach based on proportionality and proven customer harm

Ofcom has stated that it must implement all of the requirements of the EECC but we believe – given Brexit – that it should take a more nuanced approach. The EECC should be transposed into English law to the extent that it ensures an improved customer experience and better outcomes for customers, whilst supporting continuing innovation and investment by providers. The requirements discussed in Section 4 do not support this principle. We therefore consider that Ofcom should be

[2] 92% of mobile customers, 89% of landline telephone customers and 87% of broadband customers were satisfied with their service. Choosing the best broadband, mobile and landline provider Comparing Service Quality, April 2019

[3] Fairness for Customers – progress updates 9 Jan 2020

more cautious in its approach and only look to implement where there is proven customer harm or a customer interest argument, and implement in a way reflective of the UK market.

Ofcom should undertake research and trial the effectiveness of interventions before implementation

Remedies aimed at improving customer engagement will often seek to positively influence customers' behaviour, for example, to get them to shop around, help them make more informed choices or switch providers. However, customer behaviour is complex, not only may they respond to a remedy in unpredictable ways but different customer groups may react differently. The most prescriptive interventions in the EECC are precisely the type of change which may appear attractive but are often proven (at best) to be ineffective and at worst harmful. As discussed by Professor Amelia Fletcher, evidence shows that demand-side remedies "*may even have had unintended negative consequences*" and "*over interventionist remedies can potentially also have negative effects in terms of crowding out commercial solutions or disincentivising innovation*."[4] This has been born out in the Financial Services sector, where the FCA has stated that "*communication is effective when the consumers pay attention to the information, have the capacity to interpret it, and are willing to incorporate it in their decision-making process.*" The FCA found that complexity and overload of information has meant that customers simply do not read the information presented to them.[5]

Customer research would help identify if customers would benefit from receiving more or different information before they enter into a contract, and help assess what contract changes customers want to be told about because they are important to them. We believe Ofcom should undertake research to ensure it has a clear view for the whole Industry. We would, however, be willing to commission omnibus research, to provide an evidence base prior to Ofcom's decisions for its final statement, if this would be helpful. We also believe that trials should be undertaken to assess the impact of any intervention. As Ofcom stated in its recent consultation, "*a trial would test measures in 'real life' scenarios, […] to evaluate [customers'] actual response*."[6] Ofcom and Industry would be able to assess if these requirements are likely to improve customer outcomes, have no effect or in fact lead to poorer outcomes for some customers, which is our concern. If customer harm is identified, this approach would also enable us to identify and trial appropriate solutions that would not have such a negative impact overall on the telecommunications market.

Specific areas in addition to those discussed in Section 4, which cannot be implemented in the timeframe

Ofcom's requirement to notify customers when their tariff is used up.

[4] The Role of Demand-Side Remedies in Driving Effective Competition A Review for Which? Professor Amelia Fletcher Centre for Competition Policy University of East Anglia 7th November 2016

[5] Smarter Consumer Communications FCA Oct 2016

[6] Trialling consumer remedies, 25 September 2019

Business customers: Ofcom's requirement for microenterprises, small enterprises and Not For Profit Customers to be notified when a service in their tariff plan is fully used up, will require ✂. Ofcom states that its proposals will not "*have a significant impact on providers*"[7] but this has not given due consideration to the implications on the business segment. This would be a major project, with ✂. There is added complexity, as ✂. We would need to ✂. Ofcom has presented no customer harm to warrant such a requirement, we therefore consider it to be disproportionate. We also believe that our existing obligation under the Digital Economy Act 2017, which protects customers by allowing them to set 'bill limits', helps achieve the same policy intent of the EECC proposal by helping to prevent bill shock. We therefore ask that Ofcom undertake research and carry out a full impact assessment before progressing with this requirement. If it does decide proceed with the requirement we will need ✂ to implement a solution.

- Consumers: similarly, we will need ✂ for consumers on legacy mobile and broadband services or voice only services.

Mobile one-month porting after termination

Ofcom's proposal for mobile one-month porting after termination is an example of a change that will require significant cost and time to implement without any demonstrable consumer benefit. It requires significant systems changes for providers, and cross-provider agreement, in order to automate. This will take considerably longer than December 2020 timeline to implement. The 18-month implementation timescales that Ofcom applied for auto-switch (albeit this change is not as considerable) is a good indication for how long technical systems changes of this nature take to implement. But given all the other changes required under the EECC, a 24-month implementation timeframe is required. Furthermore, neither Ofcom nor the EECC outlines any demonstrable consumer harm in this area that this requirement seeks to address.

[7] Fair treatment and easier switching for broadband and mobile customers - Proposals to implement the new European Electronic Communications Code, 17 December 2019, para 4.77

4 Response to consultation questions

a) Pre-contractual information and contract summary

Summary:

Customers should be provided with the right information and the right amount of information, at the right time. Too much or irrelevant information may confuse and disengage customers. Consumer law and/or the General Conditions already require providers to give all material information to customers so they can make informed transactional decisions.

Ofcom's research shows that customers are already confident engaging in the telecommunications market and Ofcom believe it is easy for customers to find the right deal and switch providers.

This proposal runs the risk of creating a worse customer experience. It will take longer for customers to sign-up to services or switch provider. It is likely to add frustration to the process as it introduces additional steps for customers. Customers may become confused, annoyed or overwhelmed by being provided with too much or unnecessary information – which in turn reduces engagement.

Ofcom should:

- Trial the effectiveness of these requirements before implementing to assess the likely impact;
- Undertake customer research to understand: a) if there is any harm that needs addressing and b) if the interventions will address that harm or c) if there are other interventions that would be more appropriate, and
- Assuming no harm, issue a statement confirming that – with the addition of the extra information required under the EECC - how we currently provide information under the General Conditions meets the requirements.

If determined to implement the proposal, Ofcom should:

- Allow flexibility in the format of information - so providers can communicate with their customers in the most effective way, for example using existing systems, brand 'voice', web-links, and
- Allow 24-months from final statement to implement the change.

Customers are already provided with key information about their deal and are confident engaging in the market

In 2019[8], c. 15 million UK mobile and broadband customers switched provider. Many of these customers will have got a price discount or a better product, whether speed, technology and/or additional services. For example, ✂ get a price discount or better product. When deciding to take a deal, customers primarily look at the quality

[8] January 2019 to January 2020

of product and service, best value for money, good customer service and recommendations from family and friends. Customers already have access to all of the information they need to make an informed decision through providers' websites, widely available comparison and switching sites, retail stores and call centres. For example, ✂ of EE Consumer customers sought information about plans and services from various sources before deciding to take a contract[9]. Ofcom's research shows that 78% of people who take mobile, landline, broadband and TV services are confident about comparing the costs of the various deals available in the market, while 76% of customers are confident in understanding the different options for the services in the market.[10] As found by the European Commission, switching levels in the UK ranked in the top ten across the 27 EU member states.[i11]

Our customer research[12] shows that customers want messages that are simple, brief and not high in frequency. As the FCA cautions, "*simply providing information does not necessarily help consumers. […] overloading consumers with information […] can lead to people making poor decisions*".[13] The majority of consumers only have a limited amount of time they are able or willing to invest in choosing the best deal for them. This means that in order to have maximum impact, information provided to customers must be short, relevant and timely, unlike the volume of written information Ofcom is proposing providers give to customers pre-contract.

This new rule will mean that a provider has to give a full set of pre-contract information for any minor change a customer may wish to make when deciding on a deal. For example, if a customer has looked at three different coloured handsets but everything else on the plan is identical, they would still be provided with three pre-contract information documents and contract summaries. They would then need to be clear about which document to keep, as it becomes part of their contract, and providers would need a way to link the correct pre-contract document to the customer's actual contract, if they decide to go ahead with the sale. This is clearly unwieldy, disproportionate and unhelpful for customers. Again, as discussed by Professor Amelia Fletcher in her paper for Which?, "*consumers may be more likely to make mistakes if they are given too much information (information overload)* [or] *too much choice (choice overload)*."

Consumer law for our Consumer customers and the General Conditions for both consumers and business customers, already require providers to give substantial amounts of material information to the customer. This is so they can make an informed purchasing decision. In addition for our Consumer customers, under consumer law we must provide this pre-contract and, if not provided in a durable medium pre-contract, it must be followed up in a durable medium post-contract. Then for customers who contract over the phone or online, there is a 14 working-day period in which customers can change their minds under Distance Selling Regulations.[14] This

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[9] ✂
[10] Ofcom Switching Tracker 2018, 30th August to 30th September 2018.
[11] http://ec.europa.eu/consumers/strategy/docs/FL243_Annex%20tables_Final.pdf
[12] BT Brilliant Messaging Customer Research (Spotless), 23 January 2018
[13] FCA Discussion paper – smarter consumer communications page 5, section 1.2.
[14] The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

already strikes the right balance. Customers do not get a raft of written material pre-contract for a sale they may never choose to complete. It also means customers are not presented with several documents and with many pieces of information repeated in different sources.

Our customer insight supports this view, as it does not identify a lack of relevant information to be a pain point for customers. We receive very few complaints from consumers on the information that we provide to them as part of the sales and order journey. For example, from January 2019 to January 2020, ✂ about our order journey. In addition, EE consumers ✂ in relation to information provision on our sales channels. For BT Consumer customers, from October 2019 to February 2020, ✂ on information provision at point of sale. Similarly, proven SME ✂, which suggests SME customers understand what they are signing up to. As such, we believe our current order journey and information provision at point of sale works well for customers.

We are however, continuously looking for ways to improve our sales journey and would be more than happy to discuss any further improvements that Ofcom has identified.

A further stimulus for engagement and shopping around for the best deal, is the new Ofcom rule requiring providers to send end of contract and annual best tariff information to customers. Ofcom stated in its press release[15] , that the new rules will "*ensure people can see whether they are on the best deal.*" Alongside the requirement coming into force, Ofcom has set up a dedicated advice hub to walk customers through the "*quick and easy journey*" to make sure they are not paying over the odds. Ofcom state that "*it's easy to find out if there's a better deal available*" and that "*it's never been simpler to switch*." Ofcom also considers it a quick process to get a better deal, "*by spending as little as five minutes on the phone to your provider you could save hundreds of pounds*."

It seems that Ofcom itself believes the current process is working well. We agree with that assessment, and also consider that Ofcom should wait and assess the impact of end of contract and annual best tariff information requirements - that have only just been implemented - before requiring further information remedies be introduced.

The proposal will have negative impacts on customer experience

For the majority of customers when they get to the stage of engaging with a provider, they want to go ahead with the transaction there and then. For example, research BT commissioned to look at purchase journey steps for landline and broadband showed that ✂.[16] Customers' may need differing amounts of help choosing the right deal, which will be reflected in how the customer chooses to interact with the provider whether in store, over the phone or on-line but customers' have done their research and know they want to go with that provider ahead of the start of the sales journey.

Customers only have a limited amount of time they are willing to invest in securing a new deal. Anything that significantly increases the length of sales journey or indeed

[15] Companies must tell customers about their best deals – press release 14 February 2020

[16] ✂

breaks that sales journey, we believe, will act as a disincentive to switch because the effort needed to engage with the process outweighs the benefits of a better deal – so running counter to Ofcom's desire to improve customer engagement. Ofcom itself supports this view, having previously stated that if consumers have a negative experience of switching, and are put off changing providers, the competitive process can be dampened in a way that means customers will incur some detriment.[17]

This new proposal will add time to the sales journey in all channels, potentially frustrating customers. For example, up to ✂. Even if we are not required to provide the information in a durable medium, reading all of the information required (under the EECC) to a customer, will lead to a much longer sales journey and a potentially worse customer experience.

If Ofcom does proceed it should first undertake research and trial the impacts of the proposals

As discussed in Section 2, due to the potential negative unintended consequences for customers - Ofcom should undertake an industry trial and customer research.

We would be more than happy to work with Ofcom and Industry on a trial.

Ofcom has not considered other more proportionate interventions

If Ofcom finds there is customer harm that needs addressing, there are a number of alternative – lower impact – options that Ofcom could consider implementing. For example: 'get a quote button' or 'save this page' for an offer on the website, which could meet the needs of those who want to compare different deals, but not impact every customer with the extra information. For example, for car, home and even gadget insurance, customers can go to a provider's website directly and receive a quote. This allows customers the freedom to shop around for offers if they choose and save those quotes if useful for them but recognises that not all customers will want to do this before they take a deal. This is a more proportionate approach and something Ofcom could explore if it does identify customer harm.

Alternative approaches would of course also need to be trialled to assess their benefit and impact but could meet Ofcom's aims in a different way, while limiting the negative impact on customer experience. We would be happy to work with Ofcom and Industry in developing these, and any other ideas, further and then trialling the most proportionate solutions.

Ofcom should allow flexibility in format to allow providers communicate with their customers in the most effective way

If Ofcom does take forward any interventions, it should allow flexibility in the format of information to ensure providers can communicate with their customers in the most effective way, using current systems. Our systems have been developed to ensure the best customer experience and help ensure our agents comply with processes. It would be hugely disproportionate if just to enable standardisation of format, providers

[17] Consumer switching - Decision on reforming the switching of mobile communication services, 19 Dec 2017

have to build new systems and train agents on that system. Whilst, as products and services develop, a rigid format will risk tying us down so that we are unable to provide helpful information to customers in the future. Furthermore, certain requirements of the EECC contract summary pro forma may not be appropriate, for example the internet speeds section for mobile. Ofcom should engage further with Industry on what information can and should be included in any pro forma.

This is a significant change impacting systems and advisors, it is unrealistic to expect implementation by December 2020

As discussed in Section 1, this is a significant change. If Ofcom does proceed with the proposal unchanged, implementation will require changes to systems and appropriate time to test those changes, and changes to sales processes, including time to train advisor training, across all sales channels. We will need 24-months from final statement to implement the change.

b) Right to terminate contracts (including bundles) for any non-beneficial change

Summary:

This is an unwarranted and extremely radical change, which should not be implemented. This change will have significant impacts on providers' ability to invest and innovate, and drive worse outcomes for customers. The proposal is impractical and runs the risk of disengaging customers, increasing prices and reducing choice. Consumer law and/or the General Conditions already appropriately protect customers against unexpected material contract changes.

Ofcom should:

- Work through the detail of how big an impact this requirement will have in practice for the UK markets;
- Undertake focus groups with providers and a full impact assessment to determine the impact this proposal would have on industry;
- Undertake customer research and trialling to assess the outcomes for customers, and
- Work with Industry to standardise the material detriment test and use that to address any limited customer harm.

If determined to implement the proposal, Ofcom should:

- ➢ Narrow the scope of the requirement to only include those changes controlled by the provider;
- ➢ Provide further guidance on how it expects this to work in practice, including on scope and definition;
- ➢ Allow 24-months from final statement for implementation, to allow providers to consider how to respond to this new rule, and
- ➢ Exempt business customers that are not micro businesses from the General Conditions.

This is a radical intervention that will have significant negative consequences

Ofcom's proposal requires that any change, which is not to the exclusive benefit of the customer, however small, and even if outside of a provider's control, would give that customer a right to cancel their contract. The proposed extension of this rule to all elements of a bundle, means a customer could also cancel all or some contracts within their bundle. Ofcom proposes to apply this requirement retrospectively. This means that the EECC rules will apply not just for new contracts entered into from the EECC effective date but to existing customer contracts. One small further change could therefore put a provider's entire base of customers at risk. This is an unacceptable commercial risk and the cost of this is impossible to assess at this stage. This is an extremely radical change - the lack of materiality threshold will have

significant impacts on providers' ability to invest and innovate and drive worse outcomes for customers. This proposed change is commercially unworkable and (in relation to the retrospective element) an excessive use of Ofcom's powers. We therefore have grave concerns with this proposal, which should not be implemented.

Ultimately this proposal could move the whole market backwards – making selling core services more attractive than, as is the current direction of travel across industry, developing converged services, services with benefits, content services or other third party services. This would depress competition, reduce customer choice and lead to much poorer outcomes for customers. We do not believe that Ofcom has worked through the detail of how big an impact this requirement will have in practice for the UK markets.

Impact on investment: the new rule will mean that we have no certainty over revenues in the same way as we do today. Put simply, the greater the risk over revenue the less certainty we have in order to invest. ✂. Ofcom is also aware that we have ✂. For example: to show the potential impact of this proposal, if over the period of a year ✂.

Impact on innovation: convergence will bring huge customer benefits giving complete, undisturbed connectivity, in or out of the home by offering a complete broadband, phone and mobile package. The benefits that convergence will bring to consumers, business and the country as a whole are enormous in terms of simplicity, ease of use and of course technological benefits. For example, our Halo product offers our best connection service in and out of the home, access to the latest Smart Hub, and free help from our Home Tech Experts. But if Ofcom's proposals are implemented, there are likely to be significant disincentives to us offering one converged package to customers, as any small change to one element of that package could give rise to a right to churn the entirety of the service.

Impact on value: customers are very focused on value for money. So, we add benefits to our plans, such as swappable benefits on EE Smart Plans. ✂. We add content services like Apple Music, BT Sport or Amazon Prime. ✂. Similarly for SME, we offer a range of features such as BT Device Protect and 'always connected' guarantees. If we are exposed to a churn risk by the smallest change to even the smallest element of a package (whether within our outside of our control), we will have a more limited incentive to add this kind of value in future. For example, we are currently developing a proposition for customers who would find value in taking their broadband service with BT and mobile service with EE for a discounted price. Within the context of the new rule, we would have to consider carefully the revenue risk presented by this kind of value added offer.

Impact on prices: many prices can change throughout the year, often beyond our control. Prices for international direct dial and roaming for example, may go up by a small amount a number of times during the lifetime of a contract. At present, customers who are materially impacted by changes like this are of course given a churn right. In compliance with the current General Conditions, customers who do not use those services, or use them to an immaterial extent, are not. However, in future

providers would be put in a difficult position of either not passing on the cost to customers and absorbing the increased cost or passing the cost on to the customer but giving the entire base of customers a churn right over a number of products. Third parties or nation states could effectively hold us to ransom. To protect against these scenarios it may be that we increase prices upfront, which would mean everyone pays more in case a change later happens. For example, because roaming charges are based on international rate cards that are often secured for relatively short timeframes (and susceptible to exchange rate fluctuations), we may need to increase the price of roaming pre-emptively to mitigate against this risk. For our SME mobile, ✂.

Impact on availability of service/products: our ongoing strategy is ✂.

The proposal is impractical and runs the risk of disengaging customers

The categorical right for a customer to cancel all elements of a bundle assumes all elements of a "bundle" are equal. The proposal will mean that a material price increase to the core monthly price of say a broadband service with a 24-month minimum term, will be treated in exactly the same way as an immaterial change to a call rate for an overseas destination, the customer has never and will never call. Both will require a notification of the change and a right to cancel, extended to every service in a bundle. Currently any customer who is materially impacted by a change is contacted and notified of their right to exit their contract. It is disproportionate to extend the same right to an immaterial change and even more so to allow customers to leave any or all contracts within a bundle, in line with the new EECC definition. Quite how disproportionate this proposal is can be evidenced if we look at recent changes to **070** charge bands:

Context

- ✂

If this proposal is taken forward, there is also a risk of switching customers off to messages that are important to them. Providers would be forced to inundate customers with continuous notifications, many of which would be immaterial to them. Customers could become confused and disillusioned with the complexity and are likely to 'switch-off' from all messages, potentially missing an important message that they would want to act upon, amongst the miasma of small changes that they are unconcerned with.

It should also be noted that it is not always feasible to allow customers to cherry pick and decide which services in a bundle they will keep or cancel. As an example, the availability of BT TV is technically dependent on the customer having BT broadband. Product dependencies are clearly and transparently communicated to customers in our marketing and sales journeys.

General Conditions already protect customers against unexpected contract changes, with consumer law further protecting consumers

Customers are already protected proportionate to any harm. Our customer terms and conditions give customers an express right to cancel their contact(s) for a materially disadvantageous change. For consumers, this aligns with the Consumer Rights Act, which prohibits unfair contractual terms, which contrary to the requirement of good faith, cause a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. The CMA's Unfair Contract Terms Guidance provides further guidance on how we should comply with our Consumer Rights obligations. General Condition C1.7 requires that each time we make a contract modification, we carefully assess the impact of this on our customers (consumer or business) and notify them of the right to cancel their bundled services if we assess the change is likely to be materially detrimental to them.

Article 20(2) of the Universal Services Directive gives customers the right to leave their contract without penalty, if a provider modifies their contractual conditions. In implementing this requirement into the General Conditions, Ofcom took proportionality into account and aligned with the principle of 'significant imbalance' set out in UK consumer law. Ofcom therefore included the proviso that the right to cancel should apply only where a modification was likely to cause "*material detriment*" to the customer. Ofcom subsequently issued guidance that affords specific additional protection for mid-contract price increases.

We strongly believe that material detriment is still the right proportionate protection for customers. Ofcom has not presented any evidence to show any new customer harm that might warrant such a radical intervention as the one proposed by the EECC. Assessing material detriment allows us to transparently communicate with customers and give them a right to cancel for changes that matter to them, without overloading them with unnecessary communications that would cause disengagement. As we have stated previously, Ofcom could strengthen this measure by determining a common standard or threshold for the Industry.

If Ofcom does proceed it should first undertake research and trial the impacts of the proposals

As discussed in Section 2, due to the potential negative unintended consequences for customers - Ofcom should undertake an industry trial and customer research.

We would be more than happy to work with Ofcom and Industry on a trial.

Additionally, Ofcom must define the parameters of how it intends this intervention to work in practice and carve out necessary exceptions, particularly for changes or issues that are outside of the control of providers.

If Ofcom does decide to proceed with this proposal, it must provide further guidance on how the new rule will work in practice

What is deemed to constitute a 'benefit': Ofcom must be clear on what is 'non-beneficial'. This would need to work equally for products as well as services. In

addition, we would also welcome guidance as to what degree a change has to be linked to a customer in order to trigger a 'non-beneficial' change. For example, if the price of roaming increases in Azerbaijan and the customer has never visited that country or is not likely to visit, then would that customer have a right to terminate their contract (and wider bundle)?

The definition of bundle requires additional guidance: Ofcom must define the parameters of how it intends this intervention to work in practice and carve out necessary exceptions. Particular consideration should be given to services that are outside of the control of providers. The requirement must protect against a change to a monthly third party content add-on, triggering a right to cancel underlying core services, and to prevent customers choosing, at will, which elements of a bundle they wish to retain or cancel irrespective of which contract has been changed. Particular consideration should also be given as to the impact on underlying services where changes are made to optional monthly add-ons.

Definition of changes that are 'purely administrative' is disproportionate: We note that there is an exclusion to granting and notifying a right to cancel for administrative changes. But, this is a two part test – it has to be purely administrative and have no negative impact on the customer. This would mean, for example that if a provider say changed its bank account, so the customer had to change Direct Debit details, all customers would have a right to leave their contracts, this is obviously disproportionate.

Clarification is needed in regards to customers' right to return terminal equipment: Where a customer has a right to churn, Ofcom proposes that customers are only charged a '*service fee*' (usage of data, minutes, SMS) up until the date of termination and if a customer chooses to retain terminal equipment, either the remaining value of the equipment (taking into account depreciation) or the '*terminal equipment fee*' from the date of termination to the end of the minimum term. We believe Ofcom should clarify that providers are not required to proactively ask customers if they want to retain or return their terminal equipment. This would be disproportionate and unworkable, for example:

- There are circumstances in which customers are not be able to retain their terminal equipment, for example broadband routers or TV set-top boxes.
- Returning handsets would present both a practical and commercial risk. ✂. Handsets would then have to be refurbished, in order to be resold, at a cost to providers but with no guarantee of resale.
- Providers would also need to develop new processes, and change terms and conditions, to calculate for charging for terminal equipment.

This would be a significant financial and operational change, it is unrealistic to expect implementation within six months

There would be a ✂ impact on BT in having to make ✂. We would not only need to ensure ✂. We are also concerned as to how we would clearly communicate to

customers, which services are and are not in scope, for each right to cancel notification we send. This would likely ✂ from final statement to implement.

We strongly disagree with the revised General Conditions on applying to all classes of business customers

We are concerned that the revised General Conditions, as they currently stand, extend to all size of businesses even though no customer harm to this segment has been demonstrated. We believe that by including large businesses exacerbates the risks above with respect to the potential impact on provider investment, innovation, value, customer prices and the availability of products/services.

Ofcom fails to recognise the complexity in the large business customer information, communications and technology (ICT) marketplace, and the existing strength of customers' bargaining power (often between evenly sized undertakings). This would create a significant imbalance between the parties to the contract where an immaterial change to a contract would allow the enterprise customer to terminate the entire contract, regardless of value, PECS status, or the fact that the contract was bilaterally negotiated and agreed. This is particularly an issue with contracts that cover several jurisdictions because it could potentially mean an immaterial contractual change in one jurisdiction could allow a customer to exit the contract in an unrelated jurisdiction.

✂.

We therefore believe that the proposed requirement is unsuitable for the contractual, commercial and product complexity of the large business sector environment, including those businesses that operate globally across different jurisdictions. As articulated above, we consider that Brexit provides a unique opportunity for Ofcom to take a more sophisticated and proportionate approach to implementation of the EECC to secure the best outcome for UK consumers. We would therefore urge Ofcom to seek timeline flexibility from the UK Government and EU on the implementation of EECC, and exempt large business customers from this requirement if Ofcom is minded to proceed with removing the material detriment threshold.

c) Switching

Summary:

We agree with the general approach taken by Ofcom. We do however wish to ensure that the right process is specified, and have some concerns in relation to the compensation proposals and the differences in proposed regulation of intra-Openreach switches versus switches between different platforms.

Ofcom should:

- Ensure that any new process developed for switching of fixed services across platforms is truly gaining provider-led, with the customer only needing to contact the gaining provider as a "one-stop shop".
- Note that the process preferred by BT, and the majority of other providers, for cross-platform switching would best meet all of Ofcom's (and the EECC's) requirements in relation to: timing, continuity of service, alignment with existing number porting processes, ensuring the customer is fully-informed in advance and provides their consent to the switch.
- Clarify that whilst there must be an easy and timely claims process, compensation is not required to be provided automatically by all providers, but only those who are signatories to the Voluntary Automatic Compensation Code of Practice.
- Ensure consistency in the regulatory obligations applying to providers on the Openreach access network and those on other platforms, to ensure no undue discrimination.
- Not be bound by the EECC December 2020 deadline when considering the optimum switching processes for the future.

We are generally supportive of Ofcom's proposed way forward

We completely agree that effective switching processes are vital to well-functioning markets, allowing customers to exercise choice and move to the provider which best meets their needs at a particular time, thereby driving healthy competition. In particular, it is extremely important that customers can move easily to and from different physical fixed networks, in order to support current and future investment in ultrafast broadband services.

On the whole, we are supportive of Ofcom's proposals to put in place new general switching rules that set out providers' high-level obligations in relation to all switches (including cross-platform), so that all customers have a baseline level of protection and can switch without friction or unnecessary effort. We are also supportive of the approach Ofcom is proposing in relation to the retention of existing porting, Notification of Transfer and Auto-Switch processes as far as possible, so that existing protections and efficiencies are maintained. Such an approach will be more likely to be proportionate, effective and quicker to implement than an attempt to introduce

any radical changes to the way customers switch between providers today, e.g. between providers on the Openreach platform, and the way they currently port their numbers..

Services in scope must include bundles

We agree with Ofcom's approach in relation to inclusion of all switching and porting of Internet Access Services (IASs) and Number Based Interpersonal Communications Services (NBICSs). It is important to note that any switching process chosen must be capable of dealing seamlessly with bundles of services, particularly where a customer is bringing together into a bundle a collection of services that were previously provided by separate suppliers.

It is right to allow more flexibility in relation to business customers

We agree that any switching and porting processes must necessarily apply to both residential and business customers, regardless of the requirements of Article 106 of the EECC, because it would not be feasible to have different processes for switching the same services, dependent on the nature of the end user. But it is appropriate and necessary to take a more flexible approach to regulation where business customers are concerned, given their widely-differing sizes and requirements, and (in general) their reduced needs for protection.

Gaining provider-led processes are essential for smooth switching

The EECC is clear that switching and porting processes must be gaining provider-led, and we are strongly of the view that any new processes developed for cross-platform switching (e.g. between providers on the Openreach platform and new fibre providers ("altnets") must require no more contact between the customer and the losing provider than is the case today for switching between Openreach-based providers.

Since switching processes for intra-Openreach fixed voice and broadband switches and those for switching between Openreach and altnets need to be the same as far as customers are concerned, it would be a retrograde step to start requiring customers switching between Openreach-based providers to have to contact their losing provider and get a code to begin this process. Back in 2014, the industry was required by Ofcom to move away from such a code-based process; the Migration Authorisation Code (MAC) process was removed from all systems because it was deemed by Ofcom to create too much friction for customers, and the Notification of Transfer process was developed and implemented for switching broadband services.

We are in the process of contributing to detailed industry/OTA discussions and reports, and would welcome further discussion with Ofcom once it has received our submissions via the OTA. We will then respond to Ofcom's further consultation in which it intends to specify the gaining provider-led process it requires industry to implement.

We agree on timing and date of a switch, and continuity of service

We agree with Ofcom's proposal to set an obligation on all providers to ensure that a switch is completed either on a date specified by the customer where technically

possible, or no later than one working day after the necessary validation processes have been completed, the network connection is ready and any porting of phone numbers is ready to be activated. Continuity of service should be the aim whenever technically possible, and we agree that where no shared physical infrastructure is involved, losing providers should not cease their service(s) until the gaining provider has activated the customer's new service(s). The proposed cross-platform switching process option that BT supports would meet this requirement.

Customers must be fully-informed

We support Ofcom's proposal to require all providers to ensure both residential and business customers are adequately informed before and during the switching process, and that clear information on the process to follow is made available on providers' websites (including any information on additional support for disabled customers). BT's preferred switching process is simple and offers a one-stop shop for all customers; it is consistent with the existing intra-Openreach switching process and with existing fixed number port and home mover processes, and also with switching processes in the energy industry, in that customers only need to contact their gaining provider and the switch will then be taken care of. This process would therefore be easy for all customers to understand, and would likely be in line with their expectations.

Subject to our comments above, on the new requirements for pre-contract information, we agree with the specific information that Ofcom proposes gaining providers should give to residential customers regarding the arrangements for service provision, the switching process itself and the availability of compensation.

We agree that residential customers should be at least as well-informed as part of any new cross-platform switching process as they are under today's regulated switching processes. The information requirements listed by Ofcom are reasonable. We agree that at the time the information is given by the losing provider, the likely total cost to the customer of switching away is a key piece of information to enable the customer to make an informed decision. We note that with BT's preferred switching process option, the total cost quoted will be the actual final cost, because the gaining provider will have supplied its provision date and therefore the losing provider will know the customer's cease date (from which to calculate precise ETCs, etc.). However in a code-based process, particularly for customers who have no automated means of acquiring the code from the losing provider, the information in the first instance will have to be provided over the telephone, rather than in a durable medium, and there could potentially be a significant gap in time between the customer being given the information and the setting of the switch date by the gaining provider. This means that the information given could be less precise. Provision of information over the telephone could also potentially be more difficult for the customer to take in and to consider fully before making a decision on whether to switch.

Consent requirements are reasonable and slamming can be prevented

As documented fully in industry's submission of 28th February 2020 to the OTA, we are very supportive of the need for the customer's consent to the switch to be assured by

the gaining provider and for records of consent to be maintained as with the current Notification of Transfer (NoT) process. The extension of the existing requirement under the NoT process to maintain sales records for 12 months instead of 6, and to require gaining providers of mobile services to residential customers to maintain records of sales and consent, are welcome and appropriate.

Whilst there have been examples of slamming (customers being switched without their consent) under the Notification of Transfer process (at levels much reduced in recent years), it should be noted that under BT's preferred cross-platform switching process, which would also be extended to intra-Openreach switches, the risk of slamming would be much reduced, due to the use of a Retail Service Switching Hub which would record all gaining provider attempts to place orders, and due to the requirement for the customer to provide sufficient details for the losing provider to identify their account and existing services to be ceased. Full details are provided in the "Option Y" submission to the OTA of 28th February.

Compensation should not have to be automatic for all providers

We are fully in agreement that customers should be compensated for delays to the provision of their new service, abuses of the porting or switching processes, and missed service and installation appointments. It is also appropriate for similar considerations to those which Ofcom and industry took into account when determining the terms of the Voluntary Code of Practice for Automatic Compensation to be taken into account when deciding on the amounts of compensation payable, the circumstances in which it should be paid, and the time taken and methods used to do so.

However, the requirement in the EECC is for compensation to be payable in an "*easy and timely manner*". The word "*easy*" implies that the process for claiming compensation must be easy for the customer. There is nothing in the EECC to suggest that compensation must be payable *automatically,* without the customer having to make any claim. Whilst providers who are signatories to the Voluntary Code of Practice are already required by the Code to pay automatically for missed appointments and for delayed service provisions (as well as for total loss of service due to delayed fault repair), Ofcom is aware that it took those providers 15 months from the time the Code was agreed and the implementation date to develop the systems and processes needed to be able to receive new Openreach notifications (e.g. relating to the number of days' delay, taking into account customer-caused delays) and credit customers' accounts automatically without the need for a claim. This was an extremely complex implementation.

It is not entirely clear from Ofcom's proposals whether it expects compensation to be paid automatically or not. Paragraph 7.162 of Ofcom's consultation states "*we propose to specify the timeframe in which compensation must be paid to residential customers in certain circumstances*" – which implies that no time is allowed for a customer to make a claim. However, paragraph 7.163 states "*the process for obtaining compensation should be clear and not excessively time consuming for customers" – which implies that an easy claim process is intended or allowed for*.

This is a crucial issue in determining whether or not Ofcom is proposing to implement the EECC in a proportionate manner. For fixed voice and broadband service providers who are already signatories to the Code, compensation for missed appointments and delayed service provision will indeed be provided automatically. However for other providers, who have not built the necessary systems "triggers" to measure and translate provision delays into automatic bill credits, and who may wish to determine the appropriate amount payable per day based on the individual circumstances of each case, a requirement to provide automatic compensation without a claims process would be both disproportionate and impossible to comply with in the proposed timescales.

For smaller providers such as Plusnet, in particular, who are not signatories to the Voluntary Code, it should be sufficient, and compliant with the requirements of the EECC, to offer a simple, easy claims process, with response times in line with those proposed by Ofcom, i.e. claims should be processed and paid within 30 calendar days of the claim being made. Ofcom has proposed that gaining providers will be required, as part of GC1.3, to provide contract information including "*the right to compensation for delay or abuse of the process for switching providers and porting numbers and missed service and installation appointments, including how such compensation can be accessed and how it will be paid.*" In addition, the proposed new wording in GC C7.10 includes the requirement to ensure that customers are well-informed of their right to compensation, with concise and easy-to-understand guidance. Providers' compliance with these conditions will mean that consumers are made aware of the availability and entitlement to compensation and will be able to claim easily and swiftly.

In relation to mobile switching, the current GC C7.44 currently states:

"*Regulated Providers shall set out in plain English and in an accessible manner for each relevant Mobile Switching Customer guidance on how they can access the compensation provided for in Condition C7.43, and how any compensation will be paid to them*." Similarly, in relation to Number Porting, the current GC B3.11 states:

"*The Regulated Provider shall set out in plain English and in an accessible manner for each Relevant Subscriber how Relevant Subscribers can access the compensation provided for in Condition B3.10 above, and how any compensation will be paid to the Subscriber*."

Both of these conditions clearly imply that customers have to take some action to "access" compensation, and the wording in the EECC gives no reason to make these requirements more onerous for providers than they currently are by requiring compensation to be paid automatically with no action on the customer's part. If Ofcom were to require all providers, even those who are not signatories to the Voluntary Automatic Compensation scheme, to make automatic payments or credits to customers' accounts without any notification or claim from the customer, this would not be an objectively justifiable interpretation of the EECC requirement, resulting in disproportionately onerous and costly impacts on providers.

Ofcom's Guidance should be clarified

We suggest that Ofcom's Guidance, in Annex 8 to the consultation, should have some additional wording added as follows (in italics):

A8.5 …….CPs should provide reasonable compensation to customers where things go wrong with the switch and/or the porting process, *and should ensure that customers have access to an easy claims process which results in timely payment*.

The Guidance also states, at A8.11:

"Compensation payments should include the proportion of the daily rental or contract charges paid. For Pay as You Go mobile customers, a proxy could be to calculate the CP's daily average revenue per PAYG customer. Providers should also consider any direct payments and costs incurred by the customer as a result of the provider failing to comply with their switching or porting responsibilities."

We believe the first sentence should read "….the proportion of the *monthly* rental or contract charges paid", as such charges are usually paid on a monthly basis. Whilst compensation might be due to reflect inconvenience etc., it is not clear why Pay As You Go mobile customers should be reimbursed an equivalent to the CP's daily average PAYG revenue when the customer concerned will not have incurred any direct charges if the service is not working.

Notice periods should be reduced to align with switch date

As Ofcom notes, BT already reduces its notice period for customers switching through the Notification of Transfer process to align with the 10-working day transfer period built into the process, so that customers do not pay notice period charges beyond the switch date. We agree that residential customers should not have to try to co-ordinate their switch between losing and gaining providers, so as to align the switch date with the end of their notice period in order to avoid double-paying. It is appropriate to ensure that fixed and mobile services are consistent so that in both cases, notice periods and associated charges should end when the switch is completed.

Changes to General Conditions risk discriminating unfairly between providers

It is likely that a further review of the changes relating to switching and porting will be needed once Ofcom has considered and consulted further on its preferred process for switching across platforms (which will inevitably impact, to a greater or lesser extent depending on the process chosen, on the process for switching within the Openreach Access Network). We reserve our position on whether the proposed changes to General Conditions are clear, comprehensive and appropriate until that further consultation is published.

In the meantime, however, it is unclear why there appears to be different conditions proposed to be applicable to switches within the Openreach Access Network compared to those taking place across platforms. For example, it is not clear why the information required to be provided by losing providers for intra-Openreach (or intra-KCOM) switches (as per the proposed GC C7.20) would not be exactly the same as

that proposed for all other switches (as per the proposed GC C7.12), rather than a lengthier list. Similarly, it is not clear why this information would continue to have to be provided in a letter, for intra-Openreach switches, whereas for all other switches it can be provided in any "durable medium". It would not be feasible, from a systems and process perspective, for a provider on the Openreach network to behave differently, in relation to the information sent and medium used when losing a customer to another Openreach-based CP, to when losing a customer to a provider on a different platform. And as a gaining provider, the consent requirements cannot vary according to whether the new customer is being gained from another Openreach-based CP or from a provider on a different platform.

Most importantly, it is not clear why some of the requirements for intra-Openreach switches, such as the information required to be provided by losing providers under GC C7.20, and the requirement for detailed records of consent by gaining providers under GC C7.15, would continue to apply to providers serving small business customers, whereas for all other switches the requirements apply only to those providers serving "a Switching Customer who is a Consumer". If Ofcom believes, as it explains in paragraphs 7.89 to 7.92, that it does not need to mandate specific obligations in relation to information and consent for business customers in transposing the EECC, then it follows that such requirements should be aligned for intra-Openreach switches which are already regulated. Otherwise, there could be an unduly discriminatory impact in that more onerous regulatory measures would apply to those providers using the Openreach Access Network.

New switching and porting processes across platforms – implementation timeline far too short

The comments made elsewhere in this response regarding the extreme difficulty, or in some cases impossibility, of implementing the proposed changes in Ofcom's consultation apply equally here, where cross-platform fixed service switching is concerned. BT's preferred process, as described in industry's "Option Y" proposal submitted to the OTA on 28 February, requires far fewer changes to the existing Notification of Transfer process and would therefore enable the vast majority of switches (those between providers on the Openreach access network) to be compliant with EECC requirements from 21 December 2020. However, the development of systems and processes to enable cross-platform switching, as described in OTA submissions, is likely to take at least 12 months from the date when the requirement is confirmed, i.e. when Ofcom publishes its final statement following the further consultation planned for Q1 2020/21.

d) Handset unlocking

Summary:

We agree to sell handsets to consumers unlocked from point of sale, 12-months after Ofcom's Final Statement. But there is insufficient harm to justify and interim remedy

Ofcom should:

- Remove the requirement to provide unlocking information as part of the pre-contract information requirement

As we have previously discussed with Ofcom, we consider there are benefits in selling handsets locked at the point of sale. Unlocked devices are much more attractive to fraudsters as they are easier to re-sell. This increases the likelihood of handset theft. Additionally, we will need to introduce more stringent credit checks at point of sale, to protect from potential revenue loss from fraud by supplying an unlocked device that has been heavily subsidised but can be used on any network.

Although the vast majority of customers are able to unlock their phones with no difficulties, we can see that there may be potential difficulties for some customers in limited situations that may deter them from switching provider. We therefore agree with Ofcom to move to selling handsets unlocked from point of sale, 12-months from Ofcom's final statement. However, we believe this means that the effort required to provide unlocking information on an interim basis as part of pre-contract information is not justified.

e) Definitions of business customers

Summary:

Ofcom's proposed definition of "Not for Profit Customer" will inadvertently capture large organisations in strong negotiating positions that we consider is against the policy intent of the EECC. The requirement to use financial criteria in the business customer definitions will introduce additional regulatory burdens on industry with no discernible customer benefit and should be reconsidered.

Ofcom should:

- Update the proposed definition of "Not for Profit Customer" to include a staff headcount threshold of 50 individuals (in line with the definition for "Small Enterprises Customer");
- Expand its guidance to make it explicit that large Not For Profit corporations, large public sector bodies (including national and local Government bodies) and multinational charities should not be considered as Not For Profit Customers in the context of end-user rights protections, and
- Use the flexibility afforded by Commission Recommendation 2003/361/EC to remove the financial criteria used in the proposed definitions of "Microenterprise" and "Small Enterprise Customer".

Ofcom's definition of "Not For Profit Customer" is too broad and could inadvertently include organisations that were not intended to be captured

We recognise that Ofcom needs to establish a definition for "Not For Profit Customer" to comply with the requirements of the EECC given that such a definition does not currently exist in national law. However, we consider that, as currently drafted, Ofcom's definition is too broad and is not proportionate in scope.

We note that Recital 259 of the EECC implies that Not For Profit Customers do not have strong bargaining powers and therefore require the same contractual information requirement as consumers. However, we are concerned that Ofcom's definition inadvertently captures those large Not For Profit organisations in strong negotiating positions (usually with bespoke contracts) even though no evidence has been presented by the European Commission or Ofcom to demonstrate any harm to this subset of customers.

We recommend that Ofcom should expand its guidance to make it clear that entities such as large Not For Profit corporations, large public sector bodies (including national and local Government bodies), multinational charities and those not for profit organisations that also have commercial subsidiaries (e.g. ✂) should not be considered as Not For Profit Customers insofar as end-user rights are concerned. We note that the EECC does allow Not For Profit organisations to waive all or parts of the EECC provisions if they explicitly agree but we feel that this could constitute an unfair bargaining tool if utilised by such large organisations.

For example, ✂[18]. We do not believe it to be the policy intent of the EECC for the end-user rights protections to cover such large businesses such as this.

Ofcom's should update its definition of "Not For Profit Customer" to include a staff headcount threshold

We recommend that Ofcom should use its discretion to amend its definition of Not For Profit Customer to include a staff headcount threshold of 50 individuals (whether as employees or volunteers or otherwise). This would be appropriate as it would bring it in line with the definition of Small Enterprise Customers, and we consider that such organisations would have the same level of bargaining power. Such a change would have a number of benefits including a) being simpler for customers to understand their rights b) making it easier for Ofcom to enforce and c) making it less costly for providers to implement.

We believe that a staff headcount criterion is helpful because we are not confident that reliable proxies exist to capture Not For Profit Customers. It will be challenging for providers to verify whether a customer applies "*the whole of its income, and any capital which it expends, for charitable or public purposes*"[19] as this information will not necessarily be in the public domain. It is our understanding that there is not a single Standard Industrial Classification (SIC) code (as reported by Companies House) that pertains to this type of entity, nor are they necessarily easy to identify. For example, ✂.

Ofcom should use its discretion not to use financial criteria in its adoption of the new definitions of Microenterprise and Small Enterprise Customer

We consider that using annual turnover/annual balance sheet as one of the criteria to identify business size is an unnecessary requirement that will only complicate issues and add burdensome costs which will ultimately be borne by customers. It is not clear from EECC or from Ofcom what additional customer benefit would extend from this additional level of prescription. We believe that Ofcom has the freedom within the EECC framework to exclude a turnover threshold. We would encourage Ofcom to use its discretion to ensure that resources are not wasted in setting up a new way of defining business customers that does not demonstrably improve customer outcomes or seek to address an identifiable customer harm.

We would highlight that customer financial performance data is difficult to collect[20], as it is often not publicly available (especially for the micro end of the market), and may also vary significantly over time. We also do not believe that all business customers will be willing to share this information with providers as they may not understand the relevance or be suspicious about the underlying motives.

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[18] ✂

[19] Fair treatment and easier switching for broadband and mobile customers - Proposals to implement the new European Electronic Communications Code, 17 December 2019, p19

[20] ✂.

We note that Ofcom states that "*we are using these definitions because they are required by the EECC*"[21]. However, we would challenge this on the basis that the source of the definitions of microenterprise and small enterprise is the Annex to Commission Recommendation 2003/361/EC[22], and paragraph 7 states:

As in Recommendation 96/280/EC, the financial ceilings and the staff ceilings represent maximum limits and the Member States, the EIB and the EIF may fix ceilings lower than the Community ceilings if they wish to direct their measures towards a specific category of SME. ***In the interests of administrative simplification, the Member States, the EIB and the EIF may use only one criterion — the staff headcount — for the implementation of some of their policies****. However, this does not apply to the various rules in competition law where the financial criteria must also be used and adhered to.*

We would therefore propose that Ofcom remove this requirement and simply retain the staff headcount criterion (which the Commission deems "*undoubtedly one of the most important, and must be observed as the main criterion*")[23] as we believe that the same policy objective can be met without CPs requiring customers' financial information.

[21] Fair treatment and easier switching for broadband and mobile customers - Proposals to implement the new European Electronic Communications Code, 17 December 2019, para 3.30, page 20
[22] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC), Official Journal of the European Union
[23] Ibid.

f) Emergency video relay for emergency communications, to be accessed by end-users who use British Sign Language

Summary:

We strongly support the principle that people with disabilities should have access to emergency communications that is equivalent to that experienced by other end-users and welcomes Ofcom exploring whether an emergency video replay service would be suitable for deaf users.

Ofcom should:

- Ensure that any proposition is subject to rigorous concept testing and customer trials and that the outcome of this should not be pre-judged;
- Evaluate whether other services in the market exist that could serve as possible alternative solutions;
- Provide clarification around how the procurement, implementation and running of an emergency video relay service would work in practice;
- Articulate what liabilities might exist for a Communications Provider (CP) that provides the emergency video relay service on a wholesale basis, including how it would be able to recover its costs, and
- Make clear whether it expects the service to be provided on a direct or wholesale model as these will have different commercial considerations.

Any proposed solution should first be rigorously trialled with stakeholders before being introduced and considered against any other services that may already exist in the market

We strongly support the principle that people with disabilities should have access to emergency communications that is equivalent to that experienced by other end-users. This commitment is demonstrated by our role in providing Relay UK and Emergency SMS on a wholesale basis to all CPs.

We acknowledge the concern that many British Sign Language (BSL) users do not feel as if they have an effective way of contacting the emergency services through existing means of access, and therefore welcome efforts to address these limitations. However, while we support in principle Ofcom exploring whether emergency video relay service should be available to deaf users, we would recommend that, like any new proposition, this should be subject to rigorous concept testing, customer research and market testing before any final decision is made about whether such a service should be deployed on a mandatory basis. Such an approach would be consistent with Ofcom's ambition for customer engagement remedies to be trialled in order to gauge their likely effectiveness in improving customer outcomes. We also believe that existing services in the market should be assessed as possible alternative solutions -

now or in the future – for example as part of ongoing industry discussions around the move to All-IP.

We require further clarification on a number of issues to allow meaningful consultation on the proposed solution

Notwithstanding the caveat above, in assessing how the procurement, implementation and running of an emergency video relay service could work in practice, we have some comments or points that we would welcome further clarity from Ofcom, relating to:

- **Usability** – whether Ofcom has fully considered whether the proposal fully meets the needs of deaf British Sign Language users (e.g. equipment required) and whether alternative solutions already exist (or could be further developed).
- **Multiple Suppliers and Practicalities of Use –** whether there is a risk that deaf BSL users may get confused (especially in times of high stress) on who to call in an emergency if there is more than one approved emergency video relay service in the market.
- **Pricing –** how Ofcom envisages pricing structure and tariffs to work in practice.
- **Third Party Wholesaling via one CP -** what liabilities might exist for a CP that provides the emergency video relay service on a wholesale basis, and how it can ensure it will be able to recover its costs in providing the service.

Usability

- We note that a video relay service accessed through a connected device such as a smartphone, tablet or PC only works on the assumption that a) firstly the end-user has ready access to an internet connection and/or mobile data plan b) that it is of sufficient bandwidth to handle video calls and c) that the data connection is not affected by factors such as geographic location, which cannot always be assured in all instances and d) the end-user is sufficiently familiar with how to use apps and will have devices that are running the appropriate operating systems etc. We believe that it would be useful for Ofcom to consider these factors in its market sizing assessment.
- We are aware that the need to contact the emergency services usually occurs in high-stress situations. We believe that Ofcom should consider (possibly through user testing) how viable it will be to expect BSL users to log on to their PC or smartphone and follow the instructions to make an emergency call in such situations.
- We are aware of propositions in the market, such as the newly launched TapSOS app (www.tapsos.com) that provide a non-verbal way to contact the emergency services using visual icons instead of text. We would be interested to know whether Ofcom has assessed existing services such as this with the BSL community, and whether it would potentially be considered a viable alternative to the emergency video relay service. In addition, given that it seems that the emergency video relay service would be an Over the Top (OTT)

proposition and not reliant on the physical voice infrastructure of CPs, has Ofcom considered whether access to such a service could be provided in the future by building on existing popular video calling services such as Skype, Whatsapp, or Apple FaceTime? These are services are that many customers already use and are comfortable with and may lead to a better customer experience.

Multiple Suppliers and Practicalities of use

- We note that it is Ofcom's intention for there to be "*at least one approved emergency video relay service in existence for them* [CPs] *to contract with*"[24]. We believe that there must be adequate competition in the video relay provider market so that CPs are not reliant on just one provider. We are concerned that if there is only one video relay provider then it may be able to take advantage of a CP's weak bargaining position (by virtue of there being no alternative provider/service) with respect to the price it charges for the service – which will ultimately need to be borne by all customers. We therefore recommend that Ofcom's approval criteria should include a requirement that the service should be provided to CPs on fair and reasonable terms.
- If there is to be more than one approved emergency video relay provider, we would welcome clarification on how Ofcom envisages the video relay services to be marketed by CPs if each one contracts with a different emergency video relay provider. We are concerned that this could lead to customer confusion if each CP has a different method of accessing the service – potentially exacerbated in a high-stress situation. We are also unclear about what would happen in the scenario where a BSL user contacted the video relay provider that their CP did not contract with. For example, would the video relay provider know who the caller's CP was, would they reject the call on this basis (and at what risk), and if they accepted the call how this would be recharged to the appropriate CP?

Pricing

- If there is only one approved video relay service provider, would the expectation be for the service provider to be able to identify the BSL customer's CP or internet provider for the purposes of billing? In our experience, the organisation procuring the video relay service normally selects a monthly tariff based on expected number of minutes to be used in calling a specific destination. However, if the destination for all CPs is expected to be 999, we are currently not clear as to how the video relay provider will identify the relevant CP in order to bill based on customer usage.
- We would welcome further clarification from Ofcom as to how it would expect the pricing structure and tariffs to work in practice. In particular, if Ofcom were to proceed down a wholesaling CP route, then we believe it would be

[24] Fair treatment and easier switching for broadband and mobile customers - Proposals to implement the new European Electronic Communications Code, 17 December 2019Consultation document, para 10.54, p164

necessary to introduce a new pricing model. We consider that this should be one based on introducing a monthly fee and a price per minute rate. We believe that this should be shared across all CPs fairly, and that CPs should not only be charged if their customers use the service. This is because we are keen to avoid a model like Relay UK where the wholesaling CP is effectively offering a free 'option' to other CPs and is liable for the full cost of running the service if nobody uses it. This could lead to a perverse situation where other CPs are able to meet their regulatory obligations but without fully contributing to the cost of running the service.

Third Party Wholesaling via one CP

- We note that Ofcom has made reference to the current wholesale model used for Relay UK. We would be keen to understand what liabilities might exist for a CP that provides the emergency video relay service on a wholesale basis. For example, we are not clear as to who would carry the liability in the following scenarios: a) if the video relay service was unavailable b) the provider was unable to fulfil its expected Service Level Agreement (SLA) c) the provider was unable to process the call or d) the call failed before connecting to the 999 operator.
- We believe that further consideration needs to be given as to how a wholesaling CP would recover the costs incurred in setting up the contracts, monitoring usage, and establishing a billing relationship with providers that currently sit outside of the current 999 or Relay UK interconnect agreements (particularly given the current model for Relay UK is built on the principle of the CP only pays if their customer uses the service). In a scenario where the wholesaling CP has to agree a monthly contract with the video relay provider in advance, the wholesaler would require confidence that it would be able to recover its costs a) if very few BSL users used the service b) if either the emergency video relay provider itself or regulated firms contracted to the wholesaling CP cease trading.
- We would welcome clarification from Ofcom as to how it envisages the wholesaling CP to monitor usage of a third party service, particularly if the video relay provider is unable to identify usage by CP. For example, in a scenario whereby the wholesaling CP may charge a monthly standing charge to each CP and then a pence per call/minute rate for usage over and above the monthly charge, it is not clear how the wholesaling CP would monitor or verify usage of the service. Could Ofcom clarify whether it would be Ofcom, the wholesaling CP or the video relay provider that would be responsible for monitoring and policing a CP or internet access provider's compliance with respect to access to the emergency video relay service?
- Would the responsibility be on the wholesaling CP to contact proactively the regulated providers that provide internet access services or number-based interpersonal communication services, or vice versa? What will happen in a

scenario where a regulated provider and the wholesaling CP cannot agree commercial terms?

Other

- We would welcome clarification whether it is Ofcom's expectation for the platform provided by the emergency video relay provider to be able to identify the location of the caller and pass this on to the emergency services, or would Ofcom expect current normal third party processes[25] to be followed by BT in order to ensure that the correct location information is captured?

In summary, we support Ofcom exploring an emergency video relay service for deaf BSL users but believes that there is currently not a sufficient level of detail in its proposals for us to understand fully what our obligations would be. In particular, we would welcome clarification as to whether it is Ofcom's preference for CPs to proceed on a direct contracting model or on a wholesale basis. If it is the latter, then we consider that it may be easier for Ofcom to designate an approved video relay provider and make it a regulatory obligation for CPs to contract directly with it. This would be administratively easier to implement and would remove the need for a 'middle man' in the form of a wholesaling CP.

We note that Ofcom proposes to allow an implementation period of one year from the time of its Final statement but we are concerned that this pre-supposes that emergency video relay is the final solution without any trialling. We believe it would be more appropriate for the implementation period to start after this has been carried out and after the emergency video replay service providers have been approved.

[25] For example, at the moment a third party provider (e.g. video relay or currently careline, telematics providers) tells BT us to disregard the calling line identification (CLI) and then give us the customer number (if available) so we can route the call to the correct Emergency Authority. BT will then input the customer number into our screen which will then be passed to the Emergency Authority.

ANNEX A

Question 1:

Do you agree with our proposed changes and additions to the defined terms used in the GCs in order to align with the EECC, as set out in Annex 11?

We do not agree with the proposed changes to the definitions for the different categories of business customers.

We believe that Ofcom's definition of "Not for Profit Customer" will inadvertently capture large organisations in strong negotiating positions even though no evidence of customer harm has been presented for such customers, and so goes against the policy intent of the EECC. We recommend that Ofcom should amend the definition to include a staff headcount threshold of 50 employees, which would bring it in line with the new definition of "Small Enterprise Customer".

In addition, and for the same reason, we suggest that it would be helpful for Ofcom to expand its guidance to make it explicit that large corporations, large public sector bodies (including national and local Government bodies) and multinational charities should not be considered as Not For Profit Customers in the context of end-user rights protections.

We also believe that Ofcom should use its discretion not to introduce financial criteria in its adoption of the new definitions of Microenterprise and Small Enterprise Customer. The use of annual turnover/balance sheet to identify business size is an unnecessary requirement that will only complicate issues and add burdensome costs which will ultimately be borne by customers.

Question 2:

Do you agree with our proposed changes to the GCs to implement Article 102, as set out at Annexes 11 and 16?

We do not agree with Ofcom's proposed changes to the GCs to implement Article 102 as set out in Annexes 11 and 16.

We do not believe the proposed changes will facilitate customer engagement in the market and a better ability to shop around for the best deal. We view the changes as creating a worse and frustrating customer experience as there will be unnecessary disruption to the order journey, resulting in information overload.

We do not believe there is actual customer harm that requires changes to the current General Conditions as currently proposed. Customers are already well engaged in the market and our research demonstrates that they already have enough information to decide to contract with any given provider.

Question 3:
Do you agree with our proposed guidance in Annex 6 on our expectations for how providers should comply with the provision of contract information and the contract summary?

As discussed above, we do not agree with the current proposals for compliance with providing pre-contract information and a contract summary.

However, if Ofcom is minded to implement Article 102 as it is currently proposed we agree, in principle, with the proposed guidance.

Question 4:
Do you agree with our proposed changes to the GCs to implement Article 103 and our proposed approach to implementing Article 104, as set out in Annex 11?

We agree with Ofcom's proposed changes to the GCs to implement Article 103 and 104.

Question 5:
Do you agree with our proposed changes to the GCs to implement the requirements in Article 105, as set out in Annex 12?

We strongly disagree with Ofcom's proposed changes to the GCs to implement Article 105. The current proposals are a radical change that will have significant detrimental consequences to the consumer telecoms market at large – for all providers as well as customers.

The UK consumer telecoms market is evolving towards innovative product offerings comprising of converged services – including traditional telco services and new and emerging content services such as media streaming and social media. Consumer demand matches this.

Offering customers the right to cancel their contract, as it is currently proposed, will ultimately stifle innovative product and service offerings that are based on convergence and what is valued by customers. Providers at large will be disincentivised to offer innovative converged services where customers have a right to cancel for changes to a contract that are immaterial, disproportionate or outside of a provider's control.

Question 6:
Do you agree with our proposed changes to the existing guidance as summarised here and set out in Annex 7?

We do not believe that all of Ofcom's proposed changes to the existing guidance in Annex 7 are helpful, particularly in relation to the exact trigger event for a customer's right to cancel their contract. Ofcom needs to provide further clarity and guidance on a customer's right to cancel their contract and justify a radical shift from the current

test of material detriment. We do not think Ofcom has fully considered this right in practice and what it means for both businesses and consumers.

We agree in principle with Ofcom's proposed changes to its guidance in the sections dealing with automatically renewable contracts, conditions and procedures for contract termination, EOCNs and ABTNs.

We welcome Ofcom's commitment to take "a pragmatic and flexible approach to compliance monitoring and enforcement" with respect to identifying business customers, However, we continue to believe that using annual turnover/annual balance sheet (or proxies for) as one of the criteria to identify business size is an unnecessary requirement without any additional customer benefit. In addition, we would welcome detailed guidance on how to identify a "Not For Profit Customer". This is because we are not aware of this being a formal industrial classification - nor are we confident that reliable proxies exist.

Question 7:

Do you support our proposals to introduce (a) new general switching requirements for all types of switches for residential and business customers and (b) specific switching requirements on information, consent, compensation and notice period charges for residential customers?

(a) In general we support Ofcom's proposals to introduce new switching requirements for all types of switches for residential and business customers, and have long been calling for the need to ensure cross-platform switches are regulated in the same way as those between Openreach-based CPs. However there must be consistent regulatory treatment for intra-Openreach and cross-platform switches.

(b) We agree that the specific switching requirements on information, consent, compensation and notice period charges for residential customers are not necessary for business customers. We have some concerns about the compensation requirements.

Question 8:

Do you support our proposed guidance in Annex 8 on compensation for residential customers?

We support the proposed guidance in principle, but it should be clarified to state that providers who are not signatories to the Voluntary Automatic Compensation Code of Practice are not required to provide compensation automatically, but must offer an easy and timely claims process.

Question 9:
Do you agree with our assessment that device locking can deter customers from switching and cause customer harm?

Although the vast majority of customers are able to unlock their phones with no difficulty, we agree with Ofcom that device locking may deter a minority of customers from switching.

Question 10:
Do you agree with our assessment of the effectiveness of Options 1 and 2 in reducing the consumer harm that can result from device locking and the impact on providers of Options 1 and 2?

Based on our previous discussions with Ofcom, we agree with its assessment of the effectiveness of Options 1 and 2 in reducing consumer harm that can result from device locking.

Question 11:
Do you agree with our proposal to prohibit the sale of locked mobile devices?

We agree to sell handsets unlocked from point of sale 12 months after Ofcom's final statement.

Question 12:
Do you agree that we should protect customers by issuing guidance on our proposed approach when considering the case for enforcement action against non-coterminous linked contracts?

We welcome guidance from Ofcom on its proposed approach when considering the case for enforcement action against non-coterminous linked contracts.

Question 13:
Do you agree with our proposed guidance in Annex 9 which sets out our proposed approach to assessing whether certain types of non-coterminous linked contracts are likely to act as a disincentive to switch?

We agree in principle with Ofcom's proposed guidance in Annex 9.

Question 14:
Do you agree with our proposal to mandate emergency video relay for emergency communications to be accessed by end-users who use BSL?

BT strongly supports the principle that people with disabilities should have access to emergency communications that is equivalent to that experienced by other end-users and welcomes Ofcom exploring whether an emergency video replay service would be suitable for deaf users.

However, we believe that Ofcom should only decide on a solution if has been subject to rigorous concept testing and customer trials, and that this outcome should not be pre-judged. In addition, any solution should be considered against any other services that may already exist in the market (or could be further developed).

In order to assess Ofcom's proposal fully, we require further clarity of a number of different areas relating to a) usability b) risk of multiple of suppliers and practicalities of use c) pricing d) third party wholesaling via one Communications Provider. This will allow us to better understand how the service would work in practice and what our exact obligations would be.

Question 15:
Do you agree with our proposal that the obligation to provide emergency video relay free to end-users should be imposed on regulated firms that provide internet access services or number-based interpersonal communications services?

We agree in principle that fixed and mobile voice providers, as well as internet access providers, should be responsible for funding an appropriate share of the costs given the means by which the service will be accessed.

Question 16:
Do you have any comments on our proposed approval criteria for emergency video relay services, or the proposed approval process?

We agree with the approval criteria in principle but would suggest two additions based on the current Relay UK criteria:

A10.5

[…]

> *e) Emergency calls abandoned. This is in line with the standard voice service measure*
>
> *f) Total calls to be subject to a handover*

Question 17:

Do you agree with our proposal to a) extend the current requirement to cover the other specified communications i.e. any communication (except marketing) that relates to a customer's communication service, and b) extend the GC so that any customer who cannot access communications due to their disability should also benefit from accessible formats? When answering please provide evidence of any benefits or costs.

We agree with Ofcom's proposal to (a) extend the current requirement to cover the other specified communications that relates to a customer's communication service and (b) to extend the GC so that any customer who cannot access communications due to their disability should also benefit from accessible formats.

Question 18:

Do you agree that implementation by December 2020 is reasonable?

We strongly disagree with the proposed implementation date of December 2020 for all of the changes Ofcom has proposed.

The changes required under the EECC, and Ofcom's proposals, some of which are more complex than others, require significant development, testing and deployment time. This requires significant time and resource.

A realistic and reasonable timeframe for implementation would be at least 18 months from the date of Ofcom's final statement.

Question 19:

Do you agree with our proposed changes for implementing the requirements in Article 108 and Article 109 to reflect the differences between these EECC provisions and their predecessors in the Universal Service Directive?

We agree with Ofcom's proposed changes for implementing the requirements in Article 108 and 109 to reflect the differences between these provisions and their predecessors in the Universal Service Directive.

Comments should be addressed to:
BT Group Regulatory Affairs,
BT Centre,
London,
EC1A 7AJ
Regulatory.affairs@bt.com