

Response to an Ofcom Discussion Paper



Making communications markets work well for customers

A framework for assessing fairness in broadband,
mobile, home phone and pay-TV

Cover Note

This is Flextel's response to Ofcom's Discussion paper referenced here:
<https://www.ofcom.org.uk/consultations-and-statements/category-2/making-communications-markets-work-well-for-customers>

Nothing in this document is confidential.

1. Summary

Flextel welcomes this discussion document and supports the approach which is consistent with Ofcom's Duties under the Communications Act 2003, especially...

3 General duties of OFCOM

- (1) It shall be the principal duty of OFCOM, in carrying out their functions—*
- (a) to further the interests of citizens in relation to communications matters;*
 - and*
 - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.*

We also agree and support the recognition by Ofcom regarding competition in terms of meeting its regulatory duties as summarised in paragraph 2.4 of its paper:

2.4 However, we recognise that competition alone cannot achieve this in all circumstances. Sometimes markets which appear competitive, for example where no provider has significant market power, nevertheless fail to deliver fair outcomes for all customers. In such circumstances, there may still be a case for intervention to help secure fairer outcomes and, importantly, maintain customers' trust that markets will work for them.

Flextel's response focusses on tariff fairness and strongly encourages Ofcom to protect consumers from unfair tariffs that appear to be designed to misleading ordinary consumers into adopting services in the false belief that the tariff is cheaper than it is in reality.

In simple terms, we would support Ofcom taking enforcement action to stamp out devious and complex tariffs designed to mislead consumers into making poor purchase choices. Flextel believes consumer bodies such as Which¹ and the Citizen Advice Bureau would welcome this, in order to reduce the level of bill shock experienced by consumers.

2. Tariff Fairness

Major phone companies pay for calls with a wholesale rate charged by the second and that each call has no setup fee, then, sharp practice includes, but is not limited to:

- Excessive call set-up fees. A fee of over 20 pence per call - but the cost to the phone company is effectively zero. In the days of telemechanical exchanges call set-up fees were justifiable, but not today with digital charging and digital billing e.g. see BT²

¹ Which? Caroline Normand "...and overcharging are just some of the problems..."
<https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/broadband-and-phone-firms-put-fairness-first>
<https://www.which.co.uk/consumer-rights/advice/how-to-complain-if-youve-been-misled-by-your-mobile-provider>

² BT call rounding and set-up fees (simplified)
https://bt.custhelp.com/app/answers/detail/a_id/48516/~/-/about-call-rounding-and-set-up-fees
Page 26 and 59 of 182 pages (for a more exact explanation)
https://www.bt.com/assets/pdf/BT_PhoneTariff_Residential.pdf

- Charging consumers on a per whole minute basis - but the wholesale cost to the phone companies is charged on a per second basis. e.g. a 10p per minute call lasting 6 seconds, costs the consumer the equivalent of £1 per minute excluding any setup fee of up to 23 pence².
- Number ranges that are out-of-plan and subject to unexpected access fees e.g. 07 mobile codes that have the same cost to the phone company as other mobile codes but are subject to a price discrimination of 55 pence per minute "access" fee³.
- Excessive access fees for calls that cost the phone company 5 pence per minute or less. e.g. 0845 cost consumers 55 pence per minute.³ Ofcom predicted typical figure of 20 pence.

3. In Conclusion

This should be sufficient evidence for Ofcom to act. It can use existing regulations to bring fairness to telecoms tariffs e.g. why not use The Consumer Protection from Unfair Trading Regulations 2008⁴, specifically Section 5(2)(b) Misleading Actions⁵ viz:

"it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise"

Without such enforcement any Ofcom intervention that merely caps wholesale rates will continue to be ineffective, adding a cost to industry that is devoid of any consumer benefit.

For example, a call to 070 currently charged at 55 pence per minute, will still be charged at 55 pence per minute after the 1st October 2019. Why? Because Ofcom has so far done nothing to support this regulatory intervention⁶. This risks making a nonsense of its October 2018 press release⁷.

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³ Vodafone – See page 2 of a complicated guide. See 0845 and special 07 mobile codes <https://www.vodafone.co.uk/cs/groups/configfiles/documents/document/vfcon072758.pdf>
O2 – Extra charges guide (hidden from most ordinary users) <https://www.o2.co.uk/help/account-and-billing/extra-charges-guide>

⁴ The Consumer Protection from Unfair Trading Regulations 2008 <http://www.legislation.gov.uk/ukxi/2008/1277/contents/made>
<https://www.which.co.uk/consumer-rights/regulation/consumer-protection-from-unfair-trading-regulations-2008>

⁵ Misleading actions: <http://www.legislation.gov.uk/ukxi/2008/1277/regulation/5/made>

⁶ Ofcom Statement: <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-070-number-range>

⁷ Ofcom Press Release: <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/070-rules-combat-call-scams>